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# PRESIDENT TAFT AND THE EXTRA-CONSTITUTIONAL FUNCTION OF THE PRESIDENCY.

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ALEXANDER HAMILTON, who perhaps more than any other man was responsible for the shape and direction which the Constitution has taken since its adoption, frequently expressed his belief in "the insufficiency of a mere parchment delineation" of the boundaries of the several divisions of our Government. In recognition of this doctrine, and of the necessity of making those lines of division distinct and efficient, reciprocal weapons of defence were provided in that instrument whereby one department might defend itself against encroachments of another; yet it is generally admitted by students of the subject that these potential checks, though calculated to serve the purposes for which they were intended, could not have succeeded in maintaining the separation of powers had there not existed an effective public opinion to support them. In France deep-seated habits of thought have survived every change in the form of its Government and have given to its constitution for the time being, whether monarchical or republican, its scope and character. But the strongest proof of the potent influence of public opinion on constitutions may be found in the experience of some of the so-

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called republics of South America, where, though the ink-and-paper imitation of our Constitution has been established as fundamental law, the type of governmental institutions that have arisen there are as widely different from ours as could well be imagined. If, then, ours is a Government by public opinion, as it has been often styled, and if that public opinion has exercised such important control over our institutions in the past, it follows as a natural consequence that the same popular conceptions which have heretofore prevailed must be maintained if those institutions are to be perpetuated. It may not be idle, therefore, to consider whether our recent history does not indicate that we are evincing a tendency to fly in the face of our basic concepts of political structure, whether in our eagerness to reach certain results regarded as essential to our happiness and progress we are not impairing the very foundation of that happiness and progress, our organic law.

William H. Taft came to the Presidency after many years of service on the bench and in posts demanding executive ability, sound judgment, grasp and courage to an unusual degree. In each capacity where he was called upon to show his talents he succeeded under prodigious difficulties and trying circumstances, giving the most convincing proof of his profound knowledge, his great and many-sided ability, his exalted sense of public duty, and his exceptional devotion to public service. Twice he refused his heart's desire, declining proffered appointments to the Supreme Court bench in response to the imperative call of duty to remain in a less congenial place. Coming to the Presidency, in short, possessed of an equipment for the work never equalled by any predecessor, endowed with a character of demonstrated worth, upright and unsuspected, frank and fearless, graced with a modest, genial exterior, it would surely seem that the established public confidence in the man could not be easily shaken. One would suppose, without hesitation, that the people, mindful of his past, would sustain an abiding faith in his wisdom, courage and integrity; that they would withhold judgment even in the face of the most damnatory appearances; that they would angrily resent unsupported charges against his character for rectitude and capability. Yet, if such a prophecy was voiced by any seer, history, as is said to be her wont, has shown her usual disregard for the reputation of the prophet.

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When the President took office expressions of praise and hope blew in from all parts of the country, from the men on the street, from the press representing every type and shade of opinion,—praise of the sturdy man at the head of the nation, of the well-trained, conservative men with whom he surrounded himself, of the sound policies announced in his inaugural address, of the calm wisdom with which he approached his new duties; hope that the nation would now settle back, after the cheering and acclaim, to four years of quiet, steady, enduring progress. After an era of struggle to arouse the public to a sense of its dangers, to a realization of the necessity of readjusting our political, commercial and industrial forces, it seemed that a period of peace was dawning in which the constructive work of perpetuating the objects of that awakened reform sentiment would be carried forward in a vigorous but prudent and impartial manner; in which party strife would lessen, factional friction would soften, and the heat of overzealous reformers cool. "We are to have, it seems," says one editor, "during the next four years a Government of laws, of laws enforced by an Executive of just and deliberate mind." Another writes: "Progress, under the Taft *régime,* will evidently be more distinguished for orderliness than for jolting speed." And a third: "Another 'era of good feeling' seems to have dawned on the country. From every section, including the South, the inauguration of President Taft, his address on that occasion, and his selection of Cabinet officials have elicited commendation that is entirely free from any rancorous criticism and almost free from criticism of even the mildest type. The Roosevelt press and the anti-Roosevelt press vie with each other in their expressions of gratification. The radical 'yellow' papers and the conservative financial journals profess to derive equal pleasure from the new President's initial acts and words." Such were the characteristic comments at the hour of his induction, expressing the prevailing opinions of the time.

As suddenly as one wakes from a dream the attitude of the people changed. The country became aflame with dissatisfaction, distrust and disgust, and among the very first objects to be immolated on the altar of this public passion was the reputation of President Taft. An interested, hypocritical press, aided by the ambitions of self-seeking politicians, fanned the blaze. Proof wanting, vituperation is a ready substitute. The President was

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denounced as a poltroon. When open slander seems likely, by reason of its very baseness, to defeat its ends, innuendo serves the purpose. By sinister suggestions it was sought to cast doubt on his sincerity. His frankness was, with ironical sighs of pity, represented as want of tact; his stern refusal to subordinate his principles of public duty to party and personal expediency was scorned as imbecile politics. He has been assailed as the weak tool of unprincipled, designing men; the helpless colleague of those who would use the Government for private gain; an abject, hopeless failure as a President. Those who have not been moved by the specious and insinuating articles which have been constantly flashed before the eyes of the people in the print of many months must look with amazement on the complete change in sentiment that has ensued since the auspicious beginning of the administration. That a President of Mr. Taft's known character, possessing the unbounded confidence and esteem of the people, could so suddenly lose their faith and enthusiastic support, is a condition that cannot be lightly passed over, one that should give rise to the gravest consideration.

The opening months of the administration were coincident with the special session of Congress engaged in revising the tariff. Due to the public confidence, there was surprisingly little of the usual unrest and disturbance that obtain during sessions in which tariff bills are under consideration. The principal comment heard was to the effect that Congress should hurry and have it over. As time went on, however, people became persuaded that there was something particularly vicious in the shape the proposed legislation was taking. Doubts multiplied, suspicion grew into positive distrust, and the public gaze was turned to the President. To him, the only official in whose selection all the electors take part, they appealed to save them from their Congress. "Why does not Taft do something?" was the universal question. It was a shock to the public that a President, after merely submitting in calm and dispassionate tones his recommendations to Congress, should leave that body free to deliberate and frame a bill according to its best judgment. That he forbore to importune Congress, to threaten it, to insist dramatically that it revise schedules according to his ideas and the popular demands, that he did not bear down upon that body with all the force and power of his high office, appeared as an

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unpardonable failure to perform his plain duties. To assume that Congressmen could be actuated by a patriotic desire to serve the people honestly was regarded as heresy. And such has come to be the normal feeling. A growing suspicion has ripened into a firm conviction that members of Congress do not represent public interests, but instead the interests of special groups seeking privileges. And as a corollary there has arisen the assumption that the President is not merely the administrative head of the nation, but also, and pre-eminently, the extraordinary representative of the people at large, to stand as the champion of their rights, and to compel their unfaithful direct representatives to do their bidding. He is the chief, the overshadowing figure in the Government. He must at all hazards secure demanded legislation. If the lawmaking body is unwilling, if it hesitates, if it disagrees as to the expediency of proposed laws, if it resists, it must be beaten into submission. No matter how drastic the means employed, the public will applaud the man wielding the power if their demands are satisfied. A President to-day is judged, not according to the success he achieves in enforcing laws, in managing the gigantic business of the nation that has been expressly committed to his care, but by how well he succeeds in securing legislation.

In the tariff discussions then before Congress the President refused to interfere beyond arguing his views to leading members of his party and urging upon them the redemption of the pledges made to the people through the party's platform. He steadfastly declined to employ powers at his command to force them against their will to enact a law precisely according to his views. Finally, when a bill passed by both Houses of Congress was presented to him he was importuned to veto it. He well knew that he would become immensely popular if he did so; but he also knew that if he grasped this alluring jewel he would do so at the risk of plunging his country into ruin, and he did not yield to the temptation that has perverted many a good man. The courage and patriotism involved in this act made no impression. The gathering storm broke and raged with impetuous, blind fury. He was condemned for refusing to veto a bill, not because it was a bad measure, but because it was not good enough. Though he showed that it was as good a tariff law as can ever be made under such conditions as we now have, though he freely

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acknowledged its defects, though he pointed out the means by which such defects could be remedied in the future, his wise and honest words fell upon deaf ears. Once this angry dissatisfaction was aroused, pretexts were not found wanting to justify it till a ready prejudice attributed sinister motives to every act and plan of the administration. No important criticism, and, in fact, very little criticism of any sort, had been heard as to the manner in which the President discharged the duties imposed upon him by law; and a consideration of current events shows conclusively that the loss of confidence in the administration and all the embarrassments that followed in its train are clearly and directly traceable to the President's refusal to transcend the constitutional limitations, to exercise the extra-constitutional function of forcing Congress, or at least attempting to force Congress, to enact laws demanded at the moment by popular clamor.

That there is much justification for the wide-spread impression that there is something evil inherent in Congress, whether in its make-up or its management, cannot be denied. But is the remedy, unconsciously proposed by the people in their conduct, the setting-up of a power over and above Congress in the person of the Executive not more destructive than the disease complained of itself? This sentiment as to Congress and the Executive is of comparatively recent growth, and only of late has it become so conspicuous as to give rise to serious apprehension. It must be said that so far as most people are concerned our fundamental theories of Government are far more celebrated than well known. Perhaps the very familiarity with their visible product in the form of our concrete forces of Government has made study of what lies beneath seem superfluous. Yet the value of keeping ever fresh in mind those vital principles, of making our practices square with the precepts laid down for our guidance, cannot be overestimated if we continue to believe in the original virtue of those doctrines.

The framers of the Constitution were beset by two fears that explain the product of their labors. There was first the dread of a tyrannical Executive able to oppress the people. The War of Independence had been brought about because of Executive usurpation and oppression; the bugaboo of George III was still vividly before men's minds. Yet, though this dread continued to exercise an important influence, the years of anarchy and chaos

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which had lately been experienced under the ineffectual Confederation had caused a new dread to predominate,—the dread of the recklessness and tyranny of an unrestrained majority of the people. As has been said by a noted writer, "the same tendencies to wanton abuse of power which exist in a despot or a ruling oligarchy may be expected in a democracy from the ruling majority, because they are tendencies incidental to human nature." Recognizing the force of this doctrine long advanced by philosophers, and strengthened in their belief by the vivid recollection of occurrences during the recent "Critical Period," the framers set about to tie the hands of the people. They understood the lesson of history that the people of a republic, unless constrained by stable forces to exercise self-control, will turn democracy into a curse instead of a blessing. Thus was produced the spectacle of a free people setting limitations upon the exercise of their own will; thus grew up a Government divided into legislative, executive and judicial branches, interwoven with mutual "checks and balances," so adjusted as to make them safe from each other. The legislative branch was fashioned that the people can obtain any laws within the limitations set by the Constitution which they earnestly and persistently insist upon having, yet so restricted as to prevent passing fancies from being transmuted into binding acts; the executive branch, free to carry out the laws with vigor and directness, vested with power to check possible haste or misconduct on the part of the Legislature, and, in turn, restrained by the latter from overstepping the bounds of his broad field of action; the judicial branch equipped to preserve the integrity of the Constitution and laws made in conformity thereto. That Constitution has these many years been regarded with peculiar and solemn reverence. It has withstood the wear and shock of changing conditions and public excitement; it has supplied the wants of Government as well for the petty republic of homogeneous people and simple conditions of a century ago, and its gigantic outgrowth of to-day with its heterogeneous masses gathered from all quarters of the world, moulded into a coherent body, living amid our complex social and economic arrangement. To preserve it the most stupendous war of modern times was fought, and it is for us in our day to guard it against innovations which, if permitted to insinuate themselves, will in the course of time wear away the foundations of that venerable

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structure. Not that the fathers of the Constitution were endowed with supernatural wisdom or foresight, not that to-day we lack men perhaps just as wise; but because it seems impossible that the wisdom of to-day, fortified by more than a century of experience, could substantially improve the work done by those fathers, the heritage that they have handed down to us should be guarded as a priceless possession. It is, accordingly, with feelings of apprehension, neither idle nor unwarranted, that thoughtful men must view the growing disposition to look to the President as the real source of legislation and to insist that he assume powers sufficient to satisfy the demands upon him which such a function involves.

By the Constitution the President is charged with conducting foreign affairs, with seeing that the laws are executed, with appointing officials, with informing Congress of the state of the Union, and recommending measures for their consideration. To these general powers are added numerous others, express and implied, incidental and necessary, to the effective execution of the former. There is also the qualified veto power. He is made, as nearly as practicable, a purely executive officer. His so-called legislative functions are, on the one hand, merely advisory and, on the other, merely negative. The power to send bills back to Congress for further consideration, called the veto power, and which, in general, has had the effect of an absolute veto, was clearly not intended to be exercised in every case where the President personally disagreed with Congress on the expediency of a proposed law; it was expected that it would be reserved for exceptional cases, where, owing to haste, want of due deliberation or design, Congress had passed measures which appeared likely to produce evil results. In the early days there was also a general feeling among publicists that the legislative department would show a propensity to intrude upon and absorb the powers of the other departments. The veto would here serve as a safeguard. Nowhere, however, can there be found in the Constitution the slightest suggestion that would support such a development of the executive functions as to give to the President leadership and control over Congress. What might have been the form of our Government had the executive department, either through the President or through his Cabinet, been given a voice on the floor of Congress, what are the relative

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merits of the English cabinet system wherein the executive department of the Government is dependent on the majority in Parliament, and our system of separated and independent departments, are mere academic questions, interesting and suggestive, but of no practical importance. What is of gravest importance to us is the present tendency on the part of the President to assume, with the approval of the people, a place in our legislative machinery not authorized by law.

The House of Representatives is so constructed that, under proper conditions, every shade of view may be represented. This body is intended to be close to the people and sensitive to their views. The Senate, on the other hand, with its longer term, and the restriction on sudden change in its complexion, acts as a check on the hasty zeal and radicalism usually inherent in a popular assembly. Over these again lies the Presidential veto power. In short, this entire framework is based on the purpose of preventing the sudden and ill-considered views of the people from being quickly turned into laws. Our early statesmen clearly foresaw that no oppression, not even that of an absolute monarch, could become so tyrannical as that of an unrestrained majority. Upon a monarch there is at least the sobering influence of public opinion; a majority which is public opinion rests under no restraint whatsoever if not limited by positive law. It was well understood that the power to enact laws swiftly and easily might result in wild and immature notions becoming binding statutes; that the most valued rights of large numbers of citizens might be readily destroyed under the pressure of popular passion and impulse. Such a structure was created, therefore, as seemed best suited to permit not the excited fancies, but only the deliberate will of the people from becoming law. For this purpose we have the bicameral system fortified with those expedients that make for conservation. The wheels of our legislative machinery grind slowly; but they were deliberately contrived to grind slowly, so that the people might not go too fast nor too far. "In the Legislature," says Hamilton, "promptitude of decision is oftener an evil than a benefit. The differences of opinion, and the jarrings of parties in that department of the Government, though they may sometimes obstruct salutary plans, yet often promote deliberation and circumspection and serve to check excesses in the majority." Thus far, in our history, we

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have been singularly free from the tyranny of the majority usually found in republics; and this happy result is without question due to the fact that the limitations laid down in the Constitution have been constantly and substantially maintained.

If, however, we foster this tendency of making the President the dominant figure in the Government, of practically uniting in him those functions of Government which had been carefully divided among the departments, if practice shall be permitted to forge this extra-constitutional function into an inveterate custom clothed with the force of law, then with the significant feature of our Constitution overridden, with the bulwarks erected for its protection dismantled, the entire form of our Government is revolutionized. In the apparent willingness on the part of the people that this occur, if only all obstacles, great or small, standing in the way of their immediate desires be swept aside, lies the gravest cause for apprehension. They applaud the exercise of the veto power; they shriek with glee when the "big stick" is wielded on the heads of those whom they regard as their misrepresentatives; they hail as their champion the President who urges their views for the time being against the slow, hesitating, resisting body charged with the responsibility of lawmaking. If our Presidents, one after the other, shall, in order to win popular approval, resort to practices that will satisfy clamor, if they use the tremendous prestige of their office to coerce Congress, if members opposing the Presidential will shall be belittled and degraded before their constituents as unfaithful to their trust, if by such tactics Congress shall again and again be beaten into submission, will it not follow, in due course, that, having lost its power to resist the executive department armed with the approval of a majority of the people, it will sink into a condition of helpless subserviency? Will it not follow that able men, men of force and intellect, will contemn services in such an impotent body? And will it not follow that with the independence of Congress destroyed, with that body fallen under the dominion of the President, the entire framework of our much-admired and venerated Constitution will be torn and twisted out of shape? What becomes of our checks and balances among the departments? What of the restraint upon popular impulse? If the logic of the situation is pursued, and, through the power of appointment, successive Presidents should reform the Supreme Court with men

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who will construe according to the popular notion of what the law ought to be, you have public passion finally in the saddle, free to give rein to its hates and its prejudices—a chaos, a *régime* of anarchy worse even than that under the Confederation.

That a President of the United States should become so powerful as to be able to carry out designs opposed by a majority of the people, that our President might become a despot able to oppress the people, is a contingency so remote, so highly improbable as to make it unworthy of serious consideration. But that a President armed with the power of public assent, abetted by a Congress depressed into a condition of obsequious compliance, a Congress which merely registered the Presidential decrees, would be a menace to our institutions, no serious-minded citizen can honestly deny. It is high time that the average man should give himself up to earnest contemplation of our fundamental law, and that he calculate the effect upon it which our present drift is likely to have. We live in a century when, having reached a point of high material development, we have suddenly become aware that, while our attention was monopolized in achieving that material success, evils have been growing in many directions unseen, though often under our very eyes. The shock of this sudden discovery to a people fundamentally imbued with high moral principle, a people keenly sensitive to suffering and inequality, has a natural tendency to rouse it from the extremes of inattention and inaction to extremes of reckless interference with rights heretofore deemed unapproachably sacred. We are not a philosophical nor a speculative people; we prefer to make trial of a proposed reform rather than consider carefully its relation to our institutions and its probable effect upon them. I do not mean to say that in the long run we are a superficial people; that we do not, if forced to mature judgment, reach, in general, just and correct conclusions. If this were not so our ship of state would long since have been wrecked. But I do mean to say that our first impressions are likely to be inaccurate, unsound and often dangerous. And for these reasons we should carefully and constantly maintain our checks on misgovernment at their highest state of efficiency. Unless we do this, those constitutional checks will be overturned by the very elements they were created to restrain.

We are at present in the midst of an era of reform. Un-

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questionably we have many grave and complex problems to master, for the solution of which careful discrimination and profound thought are required. Among the people at large there prevails a vague idea of wide-spread evils; and though these are not clearly understood, the belief in their existence is sufficient to produce the contagious spirit of discontent that is sweeping over the country. Dissatisfaction engenders demand for remedial measures, with the result that the Government is asked constantly to interfere more and more in the affairs of its citizens. With such a spirit running high the demagogue is in his element. Charges are readily believed and specious projects for reformation as readily accepted. If, then, our Government shall be permitted to drift from its normal channels, and the people laboring under such sentiments shall be able to give prompt effect to their opinions, the danger of unwholesome, destructive legislation must be apparent. With the independence of Congress destroyed, with that body reduced to a condition in which it dares not resist public clamor, the pronunciamento of the President representing that public clamor will as surely and as promptly become law as that of a military dictator. With such conditions established, we face the peril of placing individual enterprise at the mercy of popular prejudices, of courting paternalism, of giving ourselves over, in short, to the inexorable tyranny of the majority.

But, it may be urged, so long as a majority demands a measure, what matters it how it is enacted? The majority shall rule; this is the principle of our Government. Such statements represent but half a truth; and half a truth is usually the most misleading inaccuracy. True it is that the deliberate opinions of the majority within constitutional limitations should and under our system must become law, but not temporary impulses. The will, not the whims of the people, should be enacted into the forms of law. Only their sober second thoughts should be inscribed in the statute-book. When the dust of temporary public excitement has been laid, and we are able to see clearly and calmly the relation and probable effect of proposed measures, then and only then can we build durably and well. Legislatures must not be hurried into ill-advised and immature action by transitory public sentiment. Than this nothing is more illusory and unstable. The febrile enthusiasm commonly incident to reform movements

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is invariably succeeded by depression and reaction in proportion to its heat. In these days of experts and specialists, in every department of enterprise, surely the highly important function of making laws should not be left to the inexperienced public. Legislation is for the statesman. Breadth of vision, ability to preserve a just sense of proportion, calm foresight and freedom from the pressure of time are prerequisites to the proper discharge of legislative functions. Representatives are sent to legislative halls not to put into effect the transient opinions that pass current at the moment. Often they perform their highest service to the Republic in setting their faces bravely and immovably against passionate importunity. This matter has been epitomized in language that cannot be improved by the genius of political speculation of another age to whose matchless thought and expression we cannot too often recur. In these days when Congressmen who do not readily yield to the vociferous behests of press and people are so generally reprobated, we may study with profit the messages of Hamilton.

"The republican principle," he writes in the "Federalist," "demands that the deliberate sense of the community should govern the conduct of those to whom they entrust the management of their affairs; but it does not require an unqualified complaisance to every sudden breeze of passion, or to every transient impulse which the people may receive from the arts of men who flatter their prejudices to betray their interests. It is a just observation that the people commonly *intend* the *public good*. This often applies to their very errors. But their good sense would despise the adulator who should pretend that they *always reason right* about the *means* of promoting it. They know from experience that they sometimes err; and the wonder is that they so seldom err as they do, beset as they continually are, by the wiles of parasites and sycophants; by the snares of the ambitious, the avaricious, the desperate; by the artifices of men who possess their confidence more than they deserve it, and of those who seek to possess rather than deserve it. When occasions present themselves in which the interests of the people are at variance with their inclinations, it is the duty of the persons whom they have appointed to be the guardians of those interests to withstand the temporary delusion, in order to give them time and opportunity for more cool and sedate reflection. Instances might be cited in which a conduct of this kind has saved the people from very fatal consequences of their own mistakes, and has procured lasting monuments of their gratitude to the men who had courage and magnanimity enough to serve them at the peril of their displeasure."

If in Congress there is not found that ability for proper legis-

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lation, that degree of fidelity to the public interest that should be there, the remedy is plain. The people should keep a vigilant eye on Congress, should make it the kind of body it was intended to be, should retire the inefficient and untrue and replace them with men of the right type. In this manner all proper legislation may be obtained and our Constitution kept intact. But if the present direction is pursued, if the people continue to seek legislation through the medium of executive control over Congress, all the evils described must follow; the balanced framework of our Constitution will be demolished, and with it those political ideas conceived in the hour of toil and trouble and confirmed by a century of fruitful experience. In these days of war upon monopoly and special privilege, the President should not be vested with the exclusive right of representing the people. Their wishes should be expressed through the established constitutional organs. The people should not shirk their plain duty of keeping watch over their Congress by relying upon the Executive to accomplish the ends they desire. This is far easier, but it is as dangerous as it is easy. As soon as we throw off this dependence upon the Executive attention will be riveted on Congress; and only in case this occurs may we hope to see such reforms in the structure and conduct of that body adopted as its present form seems to require.

Congress was intended to be the main instrument by which the people should exercise control over the management of their political affairs, and it must not be permitted to fall under the sway of the President unless we are foolish enough to court disaster for the sake of short cuts to legislation. Either the present drift will continue till the principle shall become firmly fixed that popular demand shall become law forthwith upon the proclamation of the President, through the fiction of a message to Congress, or we must face squarely about and plant ourselves again solidly upon our original principles of representative Government; either we must keep and guard what has proved immensely successful or forsake it for what has, in other instances, been doomed to miserable failure. Congress should remain what it was created, the independent legislative branch of the Government limited only as provided by the Constitution. Abuses which have no necessary connection with our scheme of Government must not be suffered to tempt us, in order to accomplish

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immediate aims, to do those things which tend directly to break up the balance and efficiency of that system. The responsibility rests with the people. They will obtain representation no better nor worse than their vigilance merits. That responsibility should not be shifted to the President. He, in turn, should remain what the Constitution made him, and devote his talents and energy to the task of performing the functions assigned to him.

In facing political problems, we are always fortunate if we find that similar questions having presented themselves to the sagacious judgment and keen vision of Abraham Lincoln, pertinent advice from that practical prophet is available. He has spoken on the subject under consideration, and I quote from him liberally. In 1848 he wrote:

"It appears to me that the national debt created by the war renders a modification of the existing tariff indispensable; and when it shall be modified I should be pleased to see it adjusted with a due reference to the protection of our home industry. *The particulars, it appears to me, must and should be left to the untrammelled discretion of Congress.* . . . Finally, were I President, I should desire the legislation of the country to rest with Congress, uninfluenced by the Executive in its origin or progress, and undisturbed by the veto unless in very special and clear cases."

In the same year, answering the taunts of the Democrats on the floor of the House of Representatives, he said, in the course of a notable speech:

"My friend from Indiana has aptly asked, 'Are you willing to trust the people? Some of you answered substantially, 'We are willing to trust the people; but the President is as much the representative of the people as Congress.' In a certain sense, and to a certain extent, he is the representative of the people. He is elected by them, as well as Congress is; but can he, in the nature of things, know the wants of the people as well as three hundred other men coming from all the various localities of the nation? If so, where is the propriety of having a Congress? That the Constitution gives the President a negative on legislation, all know; but that this negative should be so combined with platforms and other appliances as to enable him, and in fact almost compel him, to take the whole of legislation into his own hands, is what we object to, is what General Taylor objects to, and is what constitutes the broad distinction between you and us. To thus transfer legislation is clearly to take it from those who understand with minuteness the interests of the people, and give it to one who does not and cannot so well understand it."

The soundness and logic of his views are sufficient to make them

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stand on their own bottom without the support of his great name; with it they should be doubly impressive. Thus spoke the man who, when called to the Presidency, wielded, under the stress of his time, greater power than any other who has occupied the office; but who deplored the necessity which drove him to do it, and who would speedily have laid aside the assumed powers and would have receded within ordinary limits had he lived to do so.

Not that we should have a weak or pliant Executive. In his proper sphere, as defined by law, with its manifold duties and extensive powers sufficient to challenge the capacity of the ablest man, the greater the vigor, force and initiative the Executive brings to his tasks, the more will he benefit his country. "Energy in the Executive," to quote Hamilton again, "is a leading character in the definition of good government. It is essential to the protection of the community against foreign attacks; it is not less essential to the steady administration of the law; to the protection of property against those irregular and high-handed combinations which sometimes interrupt the ordinary course of justice; to the security of liberty against the enterprises and assaults of ambition, of faction and of anarchy." Moreover, not only does a feeble Executive convert the Government, no matter how good it may be in theory, into a bad Government in practice, but a languid, irresolute President would destroy the reciprocal forces of our Constitution as surely as would a degenerated Congress.

Nor should it be said that the President ought take no part whatsoever in legislation. He is nominated by a political party and goes before the people upon a platform enunciated by that party as its foremost exponent. In fact, it is generally said that the President is the head of the party. Whether, at any given time, the President is the real or merely the nominal head of his party depends upon the personal equation of the man. At any rate, there is a vast difference between his being the leader and the dictator of his party. Though great deference is naturally paid to him, owing to the dignity of his high office, he should at most be but one of the great leaders of the party to which he belongs. For any party which falls into a state of complacent submission to the will of any man, be he President of the United States or some other body, shows a lack of vitality and independent spirit which deprives it of capacity for useful service

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to the country. Likewise a man occupying the Presidential chair who could not exercise an important influence in the councils of his party would obviously be so weak and spiritless as to be unfit for the duties in general devolving upon him. The President, then, as one of the leaders of his party, without involving himself in the petty, undignified and purely personal elements of party strife, should direct his influence, as a political leader, toward the realization of such wholesome aims as form the basis of his party's claim to preferment; he should, in conjunction with other party leaders, urge upon members of his party such measures as will carry out those aims. His success in such efforts should be dependent on the convincing force and logic of his arguments, not upon their official source. So far he should go, and no further. To insist that the President shall procure legislation and to hold him responsible for failure to obtain the enactment of measures widely demanded is to invite him to employ, if resisted, every available expedient to coerce Congress and save himself from being regarded as a failure. The functions of the President would become the instrument of the very evils they were intended to combat.

We must return to first principles if we would avert the dangers which have been pointed out; and we shall return to those principles only if the people at large become impressed with the wisdom of maintaining them. It is, therefore, upon the creation of public opinion in favor of this view that the preservation of those original ideas depends. President Taft, however, can do perhaps more than any one to bring about this result. Possessed of a judicial mind, a deep-seated veneration for law, and an inflexible determination to follow it, endowed not only with a just sense of proportion, a cool and strictly impartial judgment, but also with indomitable courage that hesitates neither to carry out plain duty nor to resist public clamor at any cost when it demands what he deems wrong or illegal, he is pre-eminently fitted to give this country an example of what the President of the United States should be; and by such an example he will ultimately do more to instil determination to resist the threatened change than could be done by volumes of argument and rhetoric. In the light of what we know of his character and conduct, we may confidently expect that the President will continue in his straight course and be the means of leading the American people



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back to faith in their ability to work out the salvation of the nation within constitutional limitations, without doing violence to our organic law; of causing them to resolve, as Lincoln said, to keep our fences where they are and cultivate our present possessions. He has again and again braved condemnation to follow the dictates of his conscience and his conceptions of legal duty; he has stood like a rock in his refusal to veto a bill or to blight the reputation of men to secure for himself certain popularity; he has devoted himself with tireless energy and skill to the achievement through legal methods of those reforms which the country seems most to need, going fully as far as a President is justified in going to promote remedial legislation. During a period of wide-spread discontent and tumultuous criticism he has kept his poise; in the face of bitter and distracting attacks, he has kept his eye single to the fulfilment of the duties he assumed. It is easy and pleasant for a President to discharge faithfully the duties incumbent upon him when the performance of those duties happens to arouse the enthusiastic applause of the people; it requires a heroic nature to do so when it results in retarding the consummation of their impatient desires and elicits the acrimonious strictures of disappointment. But if Mr. Taft, by his unwavering fidelity to moral and legal precept, has brought down upon himself the hasty censure of the hour, yet as surely as the American people admire courage and esteem well-balanced judgment, as surely as they are a just, a clear-headed and a sound-headed people, so surely, when the mists of falsehood and flattery shall have been dissipated by the inevitable light of truth and reason, will they render to him the measure of praise he so richly deserves. This people, in its right mood, will not revolutionize its form of Government, and in the course of time will gratefully do justice to the President, who, by acting in accordance with its limitations, will open their eyes to the errors which have taken hold. Once convinced that this extra-constitutional function of the President strikes at the integrity of the Constitution, they will suffer neither personal government nor government by mob spirit and the certain consequences of its exercise, to become established; but will continue to cherish and protect that Constitution, their safeguard in the past, and the hope of their future.

SAMUEL J. KORNHAUSER.

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# CAN A TARIFF COMMISSION SUCCEED?

BY HARRISON S. SMALLEY.

THE Republican platform of 1904, in renewing the allegiance of the party to the policy of a protective tariff, declared that "the measure of protection should always at least equal the difference in the cost of production at home and abroad." Nothing was said to indicate that this difference in cost should be the absolute measure of protection. On the contrary, it was more than implied that duties might properly exceed that amount. But in 1908 far greater definiteness appeared in the pronouncement of the Republican party. It was then unequivocally affirmed that "in all tariff legislation the true principle of protection is best maintained by the imposition of such duties as will equal the difference between the cost of production at home and abroad, together with a reasonable profit to American industries." This declaration was made in view of the popular conviction that monopolies in this country have been able to charge extortionate prices because they have been shielded from foreign competition by excessively high tariff duties. The Republican party, therefore, in effect announced its belief that, while the protective system should be maintained, it should not be allowed to remain an instrument through which the trusts could oppress the people. And so, in theory at least, it established the principle of relative costs of production as a prominent feature of its party doctrine.

But it is a matter of common knowledge that during the special session of 1909, Congress found itself with very fragmentary and inadequate knowledge as to relative costs of production, and was therefore compelled, in its revision of the tariff, to ignore to a large extent the principle which the Republican party had affirmed. Realizing this situation, the President and others were eager to secure the establishment of a

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permanent Tariff Commission authorized to investigate conditions of cost at home and abroad. This proposal, however, met with such vigorous opposition that only a very grudging concession to the idea was embodied in the Act. The President was authorized to employ such persons as might be required to secure information to assist him in applying the maximum and minimum provisions, and to aid the officers of the Government in the administration of the customs laws.

In pursuance of this authority the President appointed as "such persons" Messrs. Henry C. Emery, James B. Reynolds and Alvin H. Sanders, and these gentlemen, under the chairmanship of the first named, have since been commonly referred to as the Tariff Board. They have undertaken an investigation of cost conditions and in that work have the benefit of a special appropriation made by Congress at its last session. It is possible that this semi-unrecognized Board may gradually develop into a permanent non-partisan Commission with extensive powers in regard to the tariff, or that it may be supplanted by such a Commission. Almost beyond doubt one or the other of these events will presently take place. For the Republican party has so thoroughly committed itself to the principle of relative costs that it cannot now refuse to give that principle a fair trial. Moreover, the President is apparently much in favor of the plan, and the progressive element in the party is clearly disposed to insist upon it.

Now if a serious attempt is actually to be made to adjust our tariff duties according to differences in cost as found by an expert non-partisan Commission, and if the attempt succeeds, two notable achievements will have been attained. In the first place, we will have a "scientific" tariff—a tariff based on and determined by a governing principle in place of the haphazard creations which have hitherto existed. And in the second place, the tariff will cease to furnish monopolies with a ready means of extortion. It is, therefore, evident that much will be gained if this new experiment succeeds. It is also obvious that if it fails the Republican party will be placed in a most embarrassing position, so far as its attitude on the tariff issue is concerned. These facts lend interest to speculations as to the probable measure of success which will reward such efforts as may be made. It would, of course, be foolish to prophesy as to the final outcome; but

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it is possible, even at this early day, to foresee certain obstacles which must be encountered and which render the prospects of ultimate success very doubtful. As an understanding of these inevitable difficulties will enable one to follow more intelligently the progress of the experiment, it is the purpose of this article to consider those which are of the greatest importance.

1. The difficulty of securing accurate and sufficient information as to costs of production at home and abroad is an obstacle which has already been encountered and which will persistently continue to impede progress in the application of the Republican principle. For in the first place, the exact determination of costs is not an easy matter even in connection with a single plant, while it becomes a very complicated problem when all similar plants throughout the nation must be taken into account, because in various sections of a single country production takes place under different conditions and different costs therefore naturally result. And in the second place, producers are usually unwilling to disclose their costs, owing to the fear that such information may in some way be used against them. For some time two members of the Tariff Board were abroad, seeking data as to European costs of production, but if reports in the public press are to be believed they found their task anything but easy. It was hardly to be supposed that foreign producers would cheerfully supply abundant and reliable intelligence as to the conditions of expense under which they operate; and there is still less prospect that American producers will cordially welcome the investigations of a Tariff Commission or will assist such a Board in its work. Furthermore, it is extremely doubtful whether they could be compelled by legal process to disclose the required facts.

Of course something may happen to change the producers' attitude, though what developments could accomplish such a result cannot easily be imagined. Probably they will maintain their present position, and in that event about the only way in which even substantially adequate information can be secured will be the skilful employment of a species of "bluff." By announcing as the costs of production figures which are altogether too low, thereby threatening a revision of duties unfavorable to the producers, a Commission might drive them to open their books and reveal the desired data. It was, in fact, some such method which wrested from German producers the facts contained in the

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celebrated report submitted by the German Government during the special session of 1909. But, aside from its undignified character, such a method would lead to attacks upon the Commission and apparently well-founded criticisms of its competence which would weaken its prestige and imperil the success of the entire plan. On the whole, then, the difficulty of acquiring the knowledge essential to the application of the Republican principle seems very great.

2. In the second place, if the tariff system were conducted in accordance with Republican doctrine, it would be necessary to alter the duties whenever a change occurred in the costs of production either at home or abroad, and as such changes occur frequently this would mean constant modifications of the tariff. It cannot be doubted that the chronic state of uncertainty which would consequently exist with respect to the tariff would have a depressing effect upon business enterprise. True, American producers would have the satisfaction of knowing that the tariff system was avowedly protective, and that all modifications of the duties would be designed to leave an adequate measure of protection to American industries, but that fact would not altogether remove their fears. For there would always be the possibility that the Commission might err, that it might, on the basis of insufficient or erroneous information, reduce certain duties below the protective point. There would also be the possibility that when a change occurred in cost conditions which would call for an increase in duties the readjustment might not be promptly made. It might be several months before the producers could discover the facts, present them to the Commission, and satisfy that Board as to their truth. Meanwhile, home industry would be suffering because of inadequate protection. In effect, it is to be feared that a nicely adjusted system of duties designed to be exactly equal to the differences in costs of production would keep American producers in a constant state of anxiety and suspense which would to some extent impede the progress of business.

3. In carrying out the policy of relative costs it would be necessary to establish a special set of schedules for each foreign country. Duties could not be the same against all, but would have to be adjusted for each nation according to differences in costs as between it and the United States. Unless this were

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done, the chief object of the Republican principle, which is to protect Americans against monopolistic extortion, could not be attained. This fact may perhaps be most clearly brought out by means of a hypothetical illustration. Suppose that, with respect to a certain article, the American cost of production, including reasonable profits, is $1.25, while country A can market such an article here at $1, country B at $1.10, country C at $1.15, and so on. Were the duty put at a uniform level of twenty-five cents, no foreigner could get into the American market for less than American producers could profitably sell, so that the principle of protection would be maintained. Moreover, it might seem at first glance that even if domestic producers combined and formed a monopoly they could not raise the price above $1.25, for that would invite competition from country A. But this would not necessarily be true. American producers might combine with the producers in country A and by agreement raise the price to $1.30 or even $1.34, which could be done without provoking B's competition. And even without such an arrangement, if A could not fully supply the American demand, our domestic trust would enjoy a considerable measure of liberty in fixing prices and could raise them above $1.25. To avoid these difficulties, therefore, a duty of twenty-five cents would have to be levied against articles originating in A, a duty of fifteen cents against articles originating in B, a duty of ten cents against those originating in C, and so on.

But a tariff system embracing separate sets of schedules for all the nations of the world would be so complicated as to be very difficult to administer. Moreover, it would inevitably lead to dissatisfaction on the part of foreign Governments and would arouse from them constant complaints of unfair discrimination by the United States. It would be difficult for us to convince country A that we were not giving country B an undue advantage through certain adjustments of tariff duties, while B might complain that C was enjoying certain unfair preferences, and so on, through the entire list of foreign countries.

4. The transportation problem imposes another difficulty of a very serious character. A duty which would bring domestic and foreign producers together in New York on an equal footing would not be likely to produce the same happy result in an interior city. Let us again bring out the point by means of a supposititious

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case. Suppose that an American trust controlling plants in the various sections of the country could profitably sell its product in New York at $1.25 and in Omaha at the same price. Suppose also that English producers could deliver goods in New York at $1. A duty of twenty-five cents would place the rival producers on the same footing in New York City. But suppose further that the freight rate to Omaha is ten cents. Then, whereas the American trust could sell in that city at $1.25, English goods could be marketed there at no less than $1.35. The trust, therefore, could raise its price to $1.34 without incurring serious danger of English competition. On the other hand, if the duty were put at fifteen cents, the two nations would stand on the same basis at Omaha, but the English producers could undersell the American in New York. This simple case suggests a situation which would involve in almost hopeless complications a tariff system based on the principle of relative costs. The United States is a country of magnificent distances in which freight rates will always be an important element in the expense of marketing goods. Hence duties based on the costs which prevail in one place would produce discontent in other localities. With any adjustment of the tariff there would probably be complaints from consumers in certain districts, or from producers in other districts, or from both. That the system could be made generally satisfactory in so large a country as ours seems extremely doubtful.

5. A final obstacle, or rather set of obstacles, which the Republican principle of relative costs must meet, is the opposition which it is sure to provoke. This opposition will come from many different sources, but chiefly from the following three:

(*a*) All persons who on principle believe in free trade will naturally oppose the permanent establishment of the Republican plan, for it involves no concessions to free-trade doctrine. It is staunchly, though moderately, protectionist in nature, and therefore will be swept away if ever free-trade sentiment gains the ascendancy in this country.

(*b*) Politicians will also naturally oppose the principle of relative costs. Of course they will not manifest open and conspicuous hostility to it, so long as there is a strong sentiment in its favor throughout their party, but in their secret hearts they will detest it, and they will therefore resort to such subtle measures as they

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can devise to prevent its application. For to apply the Republican principle would be to take the "politics" out of the tariff. It would prevent tariff amendments and revisions designed to secure purely political ends. It would make it impossible for politicians to use the tariff, as they have in the past, for log-rolling purposes, or to strengthen their personal support through duties agreeable to their constituents, or to strengthen their party by winning the favor of certain districts or certain classes of people through tariff adjustments ostensibly in the interests of such districts or classes. Solicitous care for the "husbandman," as shown in meaningless duties on various kinds of agricultural products, could no longer be manifested. Wavering elements in the party could not be clutched and firmly held through tariff concessions, as has been done in the past. In brief, the innumerable political uses of the tariff would come to an end.

In view of this fact, it is not likely that the party politicians in Congress will ever permit a full and true application of the principle. They will be exceedingly loath to leave the determination of duties to an expert non-partisan Commission. They will, indeed, be strongly inclined to insist on saying the final word themselves. But if Congress takes the matter into its own hands and substitutes its own judgment for that of the Commission, political forces will again be found at work, the tariff will again become the victim of political bargains and of party needs, and the principle of relative costs will vanish.

(*c*) The great protected interests can also be counted upon to offer bitter and strenuous and persistent opposition. Indeed, hostility on their part has already appeared. They have been accustomed during the last forty-nine years to a system of very high duties and will not willingly relinquish the advantages of such a system. They will resent the inquisitorial features of the new plan as an invasion of that secrecy which they deem themselves entitled to maintain with reference to their own affairs. They will find much to oppose in the new plan because of the transportation difficulties above considered. They will also stand in fear of a system which involves continual and often sudden changes in tariff duties. And finally, all the incentives still exist which have for many years led the protected interests to employ all manner of means, legitimate and illegitimate, to secure high duties. For these reasons such interests will resist the attempted

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application of the Republican principle, and their influence at Washington will doubtless prove to be a factor of much practical consequence.

It will not be surprising if they insist that they should be allowed a small margin of safety in the shape of duties somewhat above the differences in costs. They will call attention to the fact that if anything occurs to increase their costs, or to lower the costs of their rivals abroad, an increase in duties can be secured only after an investigation by the Commission, during the course of which they will not have sufficient protection. They will also suggest the possibility of injury resulting from any ill-advised reductions in duties by the Commission. In view of these considerations, they will ask for a margin of safety. But if such a margin were granted at all, it would not be long before protestations would be heard that the margin was not large enough, and if different margins were allowed on different commodities complaints of discrimination would be sure to arise. Under such circumstances, there is at least a chance that one after another the margins would be increased, until the whole principle of relative costs would be lost to view.

There is one other ground on which opposition to the Republican principle would develop. The platform of 1908 declared that "the true principle of protection is best maintained by the imposition of such duties as will equal the difference between the cost of production at home and abroad, *together with a reasonable profit to American industries.*" Within limits, then, it remains with those who adjust the duties according to this principle to decide what is a "reasonable profit to American industries." They can determine how large a return an American trust should earn on its invested capital. By one adjustment of duties they can confine the profits to five per cent.; by others they can cause them to soar to ten or fifteen or twenty per cent. They can even affect to some extent the range of profits in non-monopolized lines of business. Thus the profitableness of all protected industries would be influenced and in some cases practically determined by the Federal Government.

Needless to say, this feature of the plan would arouse the opposition of all who disbelieve in governmental interference in industry. It would also provoke the antagonism of the great protected interests, which would find their profits determined

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for them by governmental officers at Washington. Cries of unfair discrimination between producers in different lines would be raised and persistent efforts would be made to have the system abolished. Whether it could stand up under the assaults which would be made upon it is a matter as to which there is very grave doubt.

Thus it appears that there are numerous reasons which justify the fear that the principle of relative costs may fail. Yet, as was said at the outset, it would be unsafe to prophesy such an outcome, for new developments may appear which cannot now be foreseen, but which will increase its chance of success. Those who are interested in the prosperity of the Republican party will naturally wish to see it triumph over all obstacles, but whether from the point of view of the public at large its final success or its ultimate failure is the thing to be desired is a question upon which there cannot be unanimity of judgment. For one's view on that question must be determined by his convictions as to the general problem of protection and free trade. The success of the principle would unquestionably intrench protection more firmly in the policy of the nation, while its collapse would surely give a powerful impulse to the advance of free-trade ideas.

HARRISON S. SMALLEY.

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# THE LAWYER AND THE COMMUNITY.*

BY WOODROW WILSON.

THE whole history of society has been the history of a struggle for law, for the definite establishment and continuance of such relationships as seemed to those who had the choice to be best suited to the support of their own influence and to the maintenance of the community over which they presided. Law is simply that part of the established thought and habit which has been accorded general acceptance and which is backed and sanctioned by the force and authority of the regularly constituted government of the body politic. The whole history of liberty, that history which so quickens our pulses as we look back upon it and which so sustains our confidence in the power of righteousness and of all the handsomer, nobler impulses of humanity, has been a struggle for the recognition of rights not only, but for the embodiment of rights in law, in courts and magistrates and assemblies. Such must always be the form of every high endeavor made in the interest of men and of the ideals of political life.

We do not fight to establish theses. We do not pour our blood out to vindicate a philosophy of politics. There are two great empires of human feeling—the realm of religion and the realm of political aspiration. In the one realm we work spiritually, our liberty is of the thought; in the other we work structurally, our liberty abides in institutions, is real only when it is tangible, a thing that can be put into operation—not in our own souls merely, but in the world of action outside of us as well. A right in the field of politics is a power to command the action of others in our own behoof; and that is also a right in law. Religions are mighty forces of belief, and the Church, when it has

* The substance of this article constituted the annual address of Dr. Wilson before the American Bar Association on August 31st, 1910.

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its genuine and entire liberty, lies outside the State; but political liberty lives and moves and has its being in the structure and practice of society. The two fields are not, indeed, sharply separated: religious freedom must be safeguarded by institutional arrangements; but religious freedom is the right to be ungoverned, political freedom the right to be governed justly and with equity as between man and man. We fight for law as well as for faith because we fight not only for the right to think, but also for the right to be and to do what we will within the limits of a just and equal order.

The old order changeth—changeth under our very eyes, not quietly and equably, but swiftly and with the noise and heat and tumult of reconstruction. The forces of society contend openly with one another, avow their antagonisms, marshal and discipline their hosts, and are keen to win, not very willing to accommodate their differences and come to a common understanding which will be for the common advantage.

All struggle for law has been conscious; very little of it has been blind or merely instinctive. It is the fashion, too, to say, as if with a superior knowledge of affairs and of human weakness, that every age has been an age of transition, and that no age is more full of change than another; but in very few ages of the world has the struggle for change been so wide-spread, so deliberate, or upon so great a scale as this which we are taking part in. The transition we are witnessing is no equable transition of growth and normal alteration, no silent, unconscious unfolding of one age into another, its natural heir and successor. Society is looking itself over, in our day, from top to bottom, is making fresh and critical analysis of its very elements, is questioning its oldest practices as freely as its newest, scrutinizing every arrangement and motive of its life, and stands ready to attempt nothing less than a radical reconstruction, which only frank and honest counsels and the forces of generous co-operation can hold back from becoming a revolution. We are in a temper to reconstruct economic society as we were once in a temper to reconstruct political society, and political society may itself undergo a radical modification in the process. No age was ever more conscious of its task or more unanimously desirous of radical and extended changes in its economic and political practice.

This is not a day in which great forces rally in secret. The

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whole stupendous programme is planned and canvassed in the open, and we have learned the rules of the game of change. Good temper, the wisdom that comes of sober counsel, the energy of thoughtful and unselfish men, the habit of co-operation and of compromise which has been bred in us by long years of free government, in which reason rather than passion has been made to prevail by the sheer virtue of candid and universal debate, will enable us to win through still another great age without revolution. This thing that is going on about us is not a mere warfare of opinion. It has an object, a definite and concrete object, and that object is Law, the alteration of institutions upon an extended plan of change.

We lawyers are servants of society, officers of the courts of justice. Our duty is a much larger thing than the mere advice of private clients. In every deliberate struggle for law we ought to be the guides, not too critical and unwilling, not too tenacious of the familiar technicalities in which we have been schooled, not too much in love with precedents and the easy maxims which have saved us the trouble of thinking, but ready to give expert and disinterested advice to those who purpose progress and the readjustment of the frontiers of justice.

Lawyers constructed the fabric of our State governments and of the government of the United States, and throughout the earlier periods of our national development presided over all the larger processes of politics. Our political conscience as a nation was imbedded in our written fundamental law. Every question of public policy seemed sooner or later to become a question of law, upon which trained lawyers must be consulted. In all our legislative halls debate thundered in the phrases of the written enactments under which our legislators and our Governors exercised authority. Public life was a lawyer's forum. Laymen lent their invaluable counsel, but lawyers guided and lawyers framed the law.

The dependence of our political movement upon the judgments of courts has not been altered, and cannot be. So long as we have written constitutions, courts must interpret them for us and must be the final tribunals of interpretation. I refer to the prominence and ascendancy of lawyers in the practical political processes which precede the judgments of the courts. Until the Civil War came and the more debatable portions of our funda-

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mental law were cut away by the sword, the very platforms of parties centred upon questions of legal interpretation and lawyers were our guiding statesmen. I suppose a more intensely legal polity never existed.

So long as passion was excluded, it was a tonic way of life. Statesmanship necessitated precise thinking. Every policy that was proposed had to be explicitly grounded upon precedent. At every step there was a re-examination of the fundamental principles which were alleged to justify or sustain it. Thought of the long history of English constitutional practice and of the avowed purpose with which government had been set up in America constituted the atmosphere in which everything was done. Every ancient, every recent contest for liberty threw its light forward upon the debates of Congress and of State Legislatures. The newest State shared with the oldest the long tradition, and all alike were thoughtful of what had been designed and hoped for by the men whose sacrifices had given life to our freedom. No doubt it stiffened the action of government. No doubt there was a formality and a scrupulous regard for the letter in the conduct of legislation better suited to a young country just finding itself and face to face only with large problems of simple and obvious character than to an older country, whose life has grown complex and confused and whose questions of exigency square with no plain precedents of constitutional practice. Lawyers will construct for you a very definite polity and construct it to admiration; they have not often shown themselves equally fitted to liberalize it or facilitate the processes of change. But the leadership of lawyers at least meant a repeated re-examination of principle and precedent, and was very instructive even when it was least enlightened. It prevented fluidity. A reason had to be given for every step taken—a reason which would commend itself to the courts after it had commended itself to statesmen. The statesman and the lawyer were clients and consorts, and the legal conscience of the people was constantly refreshed and strengthened. These are great influences. They make for character and for the solidity of institutions.

But they are gone. You have only to recall the many extraordinary interpretations of the Interstate Commerce clause of the Constitution upon which serious debate has been wasted in Congress in recent years to be convinced of it. Our lawyers them-

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selves are not carefully trained as they used to be in the principles of our constitutional law. It does not stand in the foreground of their study or practice, but in the background, very vague and general, a thing to be resorted to only upon rare occasion. Our legislatures now listen to debates upon constitutional questions with ill-concealed impatience, as tedious and academic. The nation has grown keen after certain practical objects and will not willingly brook the impediments set up by constitutions. The temper of the age is very nearly summed up in a feeling which you may put into words like these: "There are certain things we must do. Our life as a nation must be rectified in certain all-important particulars. If there be no law for the change, it must be found or made. We will not be argued into impotency by lawyers. We are not interested in the structure of our governments so much as in the exigencies of our life."

There are many reasons why this change of temper and of point of view has occurred. It is not by chance that statesmanship has grown bigger than the bounds of mere legal precedent.

In the first place, the debates and constitutional struggles of the first seventy years of our political history settled most of the fundamental questions of our constitutional law. Solid lines of decided cases carry the definite outlines of the structure and make clear the methods of its action. We seemed after the Civil War to be released from the demands of formal definition. The life of the nation, running upon normal lines, has grown infinitely varied. It does not centre now upon questions of governmental structure or of the distribution of governmental powers. It centres upon economic questions, questions of the very structure and operation of society itself, of which government is only the instrument. Our development has run so fast and so far along the lines sketched in the earlier day of constitutional definition, has so crossed and interlaced those lines, has piled upon them such novel structures of trust and combination, has elaborated within them a life so manifold, so full of forces which transcend the boundaries of the country itself and fill the eyes of the world, that a new nation seems to have been created which the old formulas do not fit or afford a vital interpretation of. The confusion has clearly come about without intention. We have been engaged in enterprises which the law as we formerly looked

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at it was clearly not meant to prevent or embarrass. We pushed them forward, therefore, without thinking of the effect they might have upon older conceptions of our legal processes. They seemed to spring out of the normal and necessary uses of the great Continent whose riches we have been exploiting. We did not think of the legal consequences one way or the other, and therefore did not need or seek the advice of constitutional lawyers.

Constitutional lawyers have fallen into the background. We have relegated them to the Supreme Court, without asking ourselves where we are to find them when vacancies occur in that great tribunal. A new type of lawyers has been created; and that new type has come to be the prevailing type. Lawyers have been sucked into the maelstrom of the new business system of the country. That system is highly technical and highly specialized. It is divided into distinct sections and provinces, each with particular legal problems of its own. Lawyers, therefore, everywhere that business has thickened and had a large development, have become experts in some special technical field. They do not practise law. They do not handle the general, miscellaneous interests of society. They are not general counsellors of right and obligation. They do not bear the relation to the business of their neighborhoods that the family doctor bears to the health of the community in which he lives. They do not concern themselves with the universal aspects of society. The family doctor is himself giving place to a score of specialists; and so is also what one might call the family solicitor. Lawyers are specialists, like all other men around them. The general, broad, universal field of law grows dim and yet more dim to their apprehension as they spend year after year in minute examination and analysis of a particular part of it; not a small part, it may be, perhaps the part which the courts are for the time most concerned with, but a part which has undergone a high degree of development, which is very technical and many-sided, and which requires the study and practice of years for its mastery; and yet a province apart, whose conquest necessarily absorbs them and necessarily separates them from the dwindling body of general practitioners who used to be our statesmen.

And so society has lost something or is losing it—something which it is very serious to lose in an age of law, when society depends more than ever before upon the lawgiver and the courts



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for its structural steel, the harmony and co-ordination of its parts, its convenience, its permanency and its facility. In gaining new functions, in being drawn into modern business instead of standing outside of it, in becoming identified with particular interests instead of holding aloof and impartially advising all interests, the lawyer has lost his old function, is looked askance at in politics, must disavow special engagements if he would have his counsel heeded in matters of common concern. Society has suffered a corresponding loss—at least American society has. It has lost its one-time feeling for law as the basis of its peace, its progress, its prosperity. Lawyers are not now regarded as the mediators of progress. Society was always ready to be prejudiced against them; now it finds its prejudice confirmed.

Meanwhile, look what legal questions are to be settled, how stupendous they are, how far-reaching and how impossible it will be to settle them without the advice of learned and experienced lawyers! The country must find lawyers of the right sort and of the old spirit to advise it, or it must stumble through a very chaos of blind experiment. It never needed lawyers who are also statesmen more than it needs them now,—needs them in its courts, in its legislatures, in its seats of executive authority,—lawyers who can think in the terms of society itself, mediate between interests, accommodate right to right, establish equity, and bring the peace that will come with genuine and hearty co-operation, and will come in no other way.

The specialization of business and the extraordinary development of corporate organization and administration have led to consequences well worth the lawyer's consideration. Every one else is considering them and considering them with deep concern. We have witnessed in modern business the submergence of the individual within the organization and yet the increase to an extraordinary degree of the power of the individual—of the individual who happens to control the organization. Most men are individuals no longer so far as their business, its activities or its moralities, is concerned. They are not units, but fractions; with their individuality and independence of choice in matters of business they have lost also their individual choice within the field of morals. They must do what they are told to do or lose their connection with modern affairs. They are not at liberty to ask whether what they are told to do is right or wrong. They

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cannot get at the men who ordered it—have no access to them. They have no voice of counsel or of protest. They are mere cogs in a machine which has men for its parts. And yet there are men here and there with whom the whole choice lies. There are men who control the machine as a whole and the men who compose it. There are men who use it with an imperial freedom of design, whose power and whose individuality overtop whole communities. There is more individual power than ever, but those who exercise it are few and formidable, and the mass of men are mere pawns in the game.

The present task of the law is nothing less than to rehabilitate the individual,—not to make the subordinate independent of the superior, not to turn corporations into debating societies, not to disintegrate what we have been at such pains to piece together in the organization of modern industrial enterprise, but to undo enough of what we have done in the development of our law of corporations to give the law direct access again to the individual,—to every individual in all his functions.

Corporations do not do wrong. Individuals do wrong, the individuals who direct and use them for selfish and illegitimate purposes, to the injury of society and the serious curtailment of private rights. Guilt, as Governor Harmon has truly said, is always personal. You cannot punish corporations. Fines fall upon the wrong persons, more heavily upon the innocent than upon the guilty, as much upon those who knew nothing whatever of the transactions for which the fine is imposed as upon those who originated and carried them through—upon the stockholders and the customers rather than upon the men who direct the policy of the business. If you dissolve the offending corporation, you throw great undertakings out of gear. You merely drive what you are seeking to check into other forms or temporarily disorganize some important business altogether, to the infinite loss of thousands of entirely innocent persons and to the great inconvenience of society as a whole. Law can never accomplish its objects in that way. It can never bring peace or command respect by such futilities.

I regard the corporation as indispensable to modern business enterprise. I am not jealous of its size or might, if you will but abandon at the right points the fatuous, antiquated and quite unnecessary fiction which treats it as a legal person; if

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you will but cease to deal with it by means of your law as if it were a single individual not only, but also,—what every child may perceive it is not,—a responsible individual. Such fictions and analogies were innocent and convenient enough so long as corporations were comparatively small and only one of many quite as important instrumentalities used in business, only a minor item in the economic order of society. But it is another matter now. They span society, and the responsibilities involved in their complex organization and action must be analyzed by the law as the responsibilities of society itself, in all its other aspects, have been.

The corporations now overshadow partnerships altogether. Still more do they overshadow all individuals engaged in business on their own capital and separate responsibility. It is an arrangement by which hundreds of thousands of men who would in days gone by have set up in business for themselves put their money into a single huge accumulation and place the entire direction of its employment in the hands of men they have never seen, with whom they never confer. These men, these quite autocratic managers, are thereby made, as it were, multiple individuals. In them are concentrated the resources, the choices, the opportunities, in brief, the power of thousands. They could never of themselves, of their own effort and sagacity, have accumulated the vast capital they employ and employ as if it were their own; and yet they have not the full legal responsibilities of those who supplied them with it. Because they have the power of thousands they have not the responsibility common to those whose power they use! It is an extraordinary anomaly!

A modern corporation is an economic society, a little economic State—and not always little, even as compared with States. Many modern corporations wield revenues and command resources which no ancient State possessed and which some modern bodies politic show no approach to in their budgets. The economic power of society itself is concentrated in them for the conduct of this, that or the other sort of business. The functions of business are differentiated and divided amongst them, but the power for each function is massed. In some instances even the functions are not separated. Railroad companies have been known to buy coal-mines. Manufacturing combinations have been observed to develop a score of subsidiary industries, to spread a network of

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organization over related enterprises, and sometimes even over enterprises whose relation to their main undertakings it is difficult for the lay mind to perceive. Society, in short, has discovered a new way of massing its resources and its power of enterprise, is building up bodies economic outside its bodies politic which may, if we do not find the means to prevent them, the means of disclosing the responsibilities of the men who compose them, dominate bodies politic themselves.

And these huge industrial organizations we continue to treat as legal persons, as individuals, which we must not think of as consisting of persons, within which we despair of enabling the law to pick out anybody in particular to put either its restraint or its command upon! It is childish, it is futile, it is ridiculous! One thinks of the old Confederation, which we had to abandon because it tried to govern States and could not command individuals. As well treat society itself as a unit; insist that it impose a fine upon itself for every wrong done, no matter how notorious it may be who did it; suggest that it embarrass all its processes of action and even break itself up into its constituent parts and begin all over again when the persons whom it has trusted prove depraved or selfish. It is not even interesting to continue such an experiment.

Society cannot afford to have individuals wield the power of thousands without personal responsibility. It cannot afford to let its strongest men be the only men who are inaccessible to the law. Modern democratic society, in particular, cannot afford to constitute its economic undertakings upon the monarchical or aristocratic principle and adopt the fiction that the kings and great men thus set up can do no wrong which will make them personally amenable to the law which restrains smaller men: that their kingdoms, not themselves, must suffer for their blindness, their follies and their transgressions of right.

It does not redeem the situation that these kings and chiefs of industry are not chosen upon the hereditary principle (sometimes, alas! they are), but are men who have risen by their own capacity, sometimes from utter obscurity, with the freedom of self-assertion which should characterize a free society. Their power is none the less arbitrary and irresponsible when obtained. That a peasant may become king does not render the kingdom democratic.

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I have no feeling of hostility towards the men who have in our day given the nation its extraordinary material power and prosperity by an exercise of genius such as in days gone by was used, in each great age, to build Empires and alter the boundaries of States. I am drawing no indictment: no indictment that I could draw would be just. No indictment that has been drawn has been just, but only exaggerated and disquieting. The time for hostilities has gone by. The time for accommodations, for common understandings, for a surcease of economic warfare and the inauguration of the peace that will come only by common sacrifice and concessions, has come. I am simply trying to analyze the existing constitution of business in blunt words of truth, without animus or passion of any kind, and with a single, clear purpose.

That purpose is to recall lawyers to the service of the nation as a whole, from which they have been drifting away; to remind them that, no matter what the exactions of modern legal business, no matter what or how great the necessity for specialization in their practice of the law, they are not the servants of special interests, the mere expert counsellors of this, that or the other group of business men; but guardians of the general peace, the guides of those who seek to realize by some best accommodation the rights of men. With that purpose in view, I ask them to look again at the corporation.

It is indispensable convenience; but is it a necessary burden? Modern business is no doubt best conducted upon a great scale, for which the resources of a single individual are manifestly insufficient. Money and men must be massed in order to do the things that must be done for the support and facilitation of modern life. Whether energy or economy be your standard, it is plain enough that we cannot go back to the old competitive system under which individuals were the competitors. Wide organization and co-operation have made the modern world possible and must maintain it. They have developed genius as well as wealth. The nations are richer in capacity and in gifts comparable to the higher gifts of statesmanship because of them and the opportunities they have afforded exceptional men. But we have done things in pursuit of them, and have nursed notions regarding them, which are no necessary part of what we seek. We can have corporations, can retain them in unimpaired ef-

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ficiency, without depriving law of its ancient searching efficacy, its inexorable mandate that men, not societies, must suffer for wrongs done. The major premise of all law is moral responsibility, the moral responsibility of individuals for their acts and conspiracies; and no other foundation can any man lay upon which a stable fabric of equitable justice can be reared.

It is perfectly possible to have corporations and serve all the necessities and conveniences of modern society by means of the great combinations of wealth and energy which we have found to be so excellent, and yet dispense with a large part of the quite outworn and now in many respects deeply demoralizing fiction that a corporation is an indivisible person. Of course we must continue to regard it as an artificial person so far as is necessary to enable it to hold such property as may be proper for the execution of its charter purposes, to sue and be sued, and to conduct its business through officers who speak for it as a whole, and whose signatures and orders are, under its by-laws and resolutions, binding upon it. It must act and live as a person and must be capable of enjoying, what individuals cannot enjoy, a certain perpetuity of power and authority, though individual men within it come and go, live, die, resign or are translated. But there its unity should stop.

In respect of the responsibility which the law imposes in order to protect society itself, in order to protect men and communities against wrongs which are not breaches of contract but offences against the public interest, the common welfare, it is imperative that we should regard corporations as merely groups of individuals, from which it may, perhaps, be harder to pick out particular persons for punishment than it is to pick them out of the general body of unassociated men, but from which it is, nevertheless, possible to pick them out—possible not only, but absolutely necessary if business is ever again to be moralized. Corporations must continue to be used as a convenience in the transaction of business, but they must cease to be used as a covert for wrong-doers.

The managers of corporations themselves always know the men who originated the acts charged against them as done in contravention of the law. Is there no means by which their names may be disclosed to the officers of justice? Every act, every policy in the conduct of the affairs of a corporation, orig-

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inates with some particular office, committee or board. The officer, the committee, the board which orders an act or originates a policy contrary to the law of the land or intended to neutralize or contravene it is an insurgent against society: the man or men who originate any such act or policy should be punished, and they alone. It is not necessary that the corporation should be broken up. It is not fair that the stockholders should be mulcted in damages. If there are damages to be paid they should be paid out of the private means of the persons who are really guilty. An analysis of the guilt is perfectly feasible. It is the duty of lawyers, of all lawyers, to assist the makers of law and the reformers of abuses by pointing out the best and most effective way to make it.

It seems to me absurd, for example—and this by way of parenthesis — to extend the law of libel to corporations, to suffer one publishing corporation to sue another for defamation. Somebody in particular has uttered the libel, somebody in particular has been libelled. Character cannot be incorporated; writing cannot be corporately done. Are lawyers so incapable of ascertaining the facts that they cannot find out who it is that did the thing or who it is that has been injured in his reputation?

I know that the matter is not as simple as it sounds. I know that some corporations are in fact controlled from the outside, not from the inside: that it often happens that some man or some small group of men who are not even in its directorate dictate its policy, its individual acts, its attitude towards law and society, and that the men who act within it are little better than automata. But are they really beyond discovery? On the contrary, is it not generally matter of common knowledge who they are? Would it take extraordinary acumen and intelligence to devise laws which would reach them also? What we are after, of course, is to obtain laws which will prevent the use of corporations to the public hurt and disadvantage. We know that the man who shoots his enemy was not in the gun, that he simply used it, and that no part of the mechanism of the gun itself is criminally liable. We can generally discover who used the gun and how he used it, whatever his cunning and secrecy. We can also find out who uses the corporations against the public interest; and we can punish him, or them, if we will, whether they belong to the actual nominal organization of the corporation

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or not. Our processes of evidence may have to be considerably altered, but we can alter them; our formal conception of parties in interest may have to be extended, but it is easy to extend it; our make-believe that we can see nobody in the transaction but those who are avowed and formal members of the organization may have to be discarded, but that ought to be a relief to our consciences. We have allowed ourselves to be ridiculously limited and embarrassed by the theory that a corporation is an indivisible person not only, but that nobody outside of it, no matter how intimate his use and control, may be brought into the suit by any genteel lawyer bred in the orthodox schools of law. A corporation is merely a convenient instrument of business and we may regulate its use as we please and those who use it. Here is merely an artificial, a fictitious person, whom God did not make or endow, which we ourselves have made with our own hands and can alter as we will. I see no law of nature in our way, but only some laws of evidence and of corporate theory which we have outgrown.

It will be said that in many instances it is not fair to pick out for punishment the particular officer who ordered a thing done, because he really had no freedom in the matter: that he is himself under orders, exercises no individual liberty of choice, is a dummy manipulated from without. I reply that society should permit no man to carry out orders which are against law and public policy, and that, if you will but put one or two conspicuous dummies in the penitentiary, there will be no more dummies for hire. You can stop the traffic in dummies, and then, when the idea has taken root in the corporate mind that dummies will be confiscated, pardon the one or two innocent men who may happen to have got into jail. There will not be many, and the custom of the trade will change!

There are other corporate matters worthy of attention, but they do not intimately concern my present theme. I think it must be admitted, for example, that the position of the minority stockholder is, in most of our States, extremely unsatisfactory. I do not wonder that he sometimes doubts whether corporate stocks are property at all or not. He does not seem to enjoy any of the substantial rights of property in connection with them. He is merely contributing money for the conduct of a business which other men run as they please. If he does not

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approve of what they do, there seems nothing for it but to sell the stock (though their acts may have depreciated its value immensely). He cannot even inquire or protest without being told to mind his own business—the very thing he was innocently trying to do! There are many things which are not satisfactory about this putting the money of many men into one pile for the use of a board of directors, and to my mind it is clearly the task of the counsellors of society to make them satisfactory. It is the duty of the profession to see to it that no man's powers exceed or lie outside of his legal and personal responsibilities—that the corporation be made a mere convenience of business and not a means of irresponsible mastery, its interior and all men within it as accessible to the law as its exterior and the scattered individuals who have no corporate ambush from which to work their will.

I have used the corporation merely as an illustration. It stands in the foreground of all modern economic questions, so far as the United States are concerned. It is society's present means of effective life in the field of industry. Society must get complete control of its instrument or fail. But I have used it only as an illustration of a great theme—namely, the responsibility of the lawyer to the community he professes to serve.

Lawyers are not a mere body of expert business advisers in the field of civil law or a mere body of expert advocates for those who get entangled in the meshes of the criminal law. They are servants of the public, of the State itself. They are under bonds to serve the general interest, the integrity and enlightenment of law itself, in the advice they give individuals. It is their duty also to advise those who make the laws—to advise them in the general interest, with a view to the amelioration of every undesirable condition that the law can reach, the removal of every obstacle to progress and fair dealing that the law can remove, the lightening of every burden the law can lift and the righting of every wrong the law can rectify. The services of the lawyer are indispensable not only in the application of the accepted processes of the law, the interpretation of existing rules in the daily operations of life and business. His services are indispensable also in keeping and in making the law clear with regard to responsibility, to organization, to liability and, above all, to the relation of private rights to the public interest.

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The structure of modern society is a structure of law rather than of custom. The lawyer's advice is more than ever necessary to the State, therefore. Communities as well as individuals stand in constant need of his guidance. This used to be commonplace doctrine amongst us. Why does it now need to be preached again? Is it mere accident that the relation of the legal profession to affairs has changed? Is it merely because the greater constitutional questions seemed for a time to be settled and legal debates gave place to industrial enterprise, a great age of material following a great age of political development? Has it been merely a change of circumstances, or has it been a change of attitude and spirit as well on the part of the profession itself? Has not the lawyer allowed himself to become part of the industrial development, has he not been sucked into the channels of business, has he not changed his connections and become part of the mercantile structure rather than part of the general social structure of our commonwealths as he used to be? Has he not turned away from his former interests and duties and become narrowed to a technical function?

Whatever may be the cause, it is evident that he now regards himself as the counsel of individuals exclusively and not of communities. He may plead the new organization of politics, which seems to exclude all counsel except that of party success and personal control; he may argue that public questions have changed, have drifted away from his field, and that his advice is no longer asked; but, whatever his explanation or excuse, the fact is the same. He does not play the part he used to play. He does not show the spirit in affairs he used to show. He does not do what he ought to do.

For there never was a time, in fact, when his advice, his disinterested and earnest advice, was more needed than it is now in the exigent processes of reform, in the busy processes of legislation through which we are passing, with so singular a mixture of hope and apprehension. I hear a great many lawyers join the cry of the business men that it is time legislators left business alone, allowed it to recover from the confusion and distraction of regulative statutes, altered tariffs and supervising commissions, find its natural methods again, and go forward upon a way of prosperity which will not be beset by fear and uncertainty. But the cry is futile, the impatience which gives rise to it is selfish

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and ignorant. Nothing is settled or can be let alone when it is known to be wrong until it is set right. We have settled nothing in our recent reform legislation. That is the reason it is so unsatisfactory and why some prudent and thoughtful men grow tired of it. But that is only another reason for seeking out and finding what will be the happy and successful way of setting our economic interests in order. There has been no satisfactory settlement, but there must be one. Public opinion is wider awake about these matters than it has been within the memory of any man living, and it is not going to turn away from them until satisfactory reforms of the law are found. There will be no peace until a happy and honorable basis of peace has been hit upon. Lawyers may come into the settlement or stay out of it, as they please, but a settlement there must be. For one, I hope that they will not stay out. I fear that it would be disastrous for them to do so—disastrous to them and to society. I covet for them their old and honorable leadership in public counsel.

Just because they have so buried themselves in modern business, just because they have been so intimate a part of it, they know better than any one else knows what legal adjustments have and have not been made—know the practices that circumvent the law, even the existing law, and the provisions of statute and court procedure that might put a stop to them or square them with what the interests of the whole community demand, theirs is the special responsibility to advise remedies. Theirs has been the part of intimate counsel in all that has been going on. The country holds them largely responsible for it. It distrusts every "corporation lawyer." It supposes him in league with persons whom it has learned to dread, to whom it ascribes a degree of selfishness which in effect makes them public enemies, whatever their motives or their private character may be. And the lawyer—what does he do? He stands stoutly on the defensive. He advises his client how he may make shift, no matter how the law runs. He declares that business would go very well and every man get his due if only legislators would keep their hands off! He keeps his expert advice for private persons and criticises those who struggle without his countenance or assistance along the difficult road of reform. It is not a promising situation.

Our reforms must be legal reforms. It is a pity they should go forward without the aid of those who have studied the law in

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its habit as it lives, those who know what is practicable and what is not, those who know, or should know, if anybody does, the history of liberty.

The history of liberty is a history of law. Men are not free when they have merely conceived what their rights should be. They are not set free by philosophies of right. Their theories of the rights of man may even lead them astray, may make them break their hearts in pursuit of hopes they can never realize, objects they can never grasp, ideals that will forever elude them. Nothing is more practical than the actual body of liberty. It consists of definitions based upon experience, or rather of practices that are of the very essence of experience. A right is worth fighting for only when it can be put into operation. It can be put into operation only when its scope and limitation can be accurately defined in terms of legal procedure; and even then it may amount to nothing if the legal procedure be difficult, costly or complicated. Liberty of speech is defined in the law of slander and of libel, and becomes mere license against which there is no protection if the law of slander or of libel be difficult or costly or uncertain to apply. Liberty of the person is defined only when the law has carefully enumerated the circumstances in which it may be violated, the circumstances in which arrests and imprisonments and army drafts, and all the other limitations upon which society may insist for its protection or convenience, will be lawful. Its reality, its solidarity, consists in the definiteness of the exceptions, in the practicality of the actual arrangements.

And it is part of its definiteness and reality that liberty is always personal, never aggregate; always a thing inhering in individuals taken singly, never in groups or corporations or communities. The indivisible unit of society is the individual. He is also the indigestible unit. He cannot be merged or put into combination without being lost to liberty, because lost to independence. Make of him a fraction instead of an integer and you have broken his spirit, cut off the sources of his life. That is why I plead so earnestly for the individualization of responsibility within the corporation, for the establishment of the principle by law that a man has no more right to do a wrong as a member of a corporation than as an individual. Establish that principle, cut away the undergrowth of law that has sprung up so rankly about the corporation and made of it an ambush and covert, and

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it will give every man the right to say *No* again, to refuse to do wrong, no matter who orders him to do it. It will make a man of him. It is in his interest no less than in the interest of society, which must see to it that wrong-doing is put a stop to.

We are upon the eve of a great reconstruction. It calls for creative statesmanship as no age has done since that great age in which we set up the government under which we live, that government which was the admiration of the world until it suffered wrongs to grow up under it which have made many of our own compatriots question the freedom of our institutions and preach revolution against them. I do not fear revolution. I do not fear it even if it comes. I have unshaken faith in the power of America to keep its self-possession. If revolution comes, it will come in peaceful guise, as it came when we put aside the crude government of the Confederation and created the great Federal State which governed individuals, not corporations, and which has been these hundred and thirty years our vehicle of progress. And it need not come. I do not believe for a moment that it will come. Some radical changes we must make in our law and practice. Some reconstructions we must push forward which a new age and new circumstances impose upon us. But we can do it all in calm and sober fashion, like statesmen and patriots. Let us do it also like lawyers. Let us lend a hand to make the structure symmetrical, well proportioned, solid, perfect. Let no future generation have cause to accuse us of having stood aloof, indifferent, half hostile or of having impeded the realization of right. Let us make sure that liberty shall never repudiate us as its friends and guides. We are the servants of society, the bond-servants of justice.

WOODROW WILSON.

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# SOCIETIES FOR MINDING ONE'S OWN BUSINESS.

BY ELIZABETH BISLAND.

ALMOST every time the postman whistles at the door of those who have the habit of giving, he hands in one or more appeals for aid. These appeals come from the managers of Boys' Clubs, from Children's Aid Societies, Societies for Improving the Condition of the Poor, from churches, missions, crêches, free kindergartens, hospitals; from societies fighting tuberculosis, fighting vice, crime, poverty, ignorance and injustice. There appears to be no ill that flesh or spirit inherits that has not been recognized, charted, studied: none that brave and unselfish human beings have not banded together to abolish or ameliorate. Every resource of science, every discovery of medicine, of psychology, of industrial progress, is laid under contribution to solve the current problems of society. Very nearly every member of society contributes something, either in personal effort or money, and many give freely of both.

There is one feature of this universal war against ignorance, wrong and pain that seems not to have received sufficient attention. The war is waged in the cities. And the cities grow and grow by arithmetical progression. Every decade shows an enormous increase of this clotting of the population into urban environment, despite heroic endeavors to replace the people on the land, to colonize, to distribute many of the juvenile victims of its untoward influences among the farming population. Every decade demonstrates the irresistible centripetal forces sweeping back again into the streets the people charitably deported, and drawing to the cities those who were born and bred to rural life. Thin rills flow out, huge rushing streams of life pour in and the balance never turns countrywards. This problem of

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the congestion of population has not escaped notice and many explanations and remedies are suggested, none of which have seemed to reach the root of the matter.

Some few here and there, however, are beginning to suspect that the very means taken to attenuate the results of this human swarming, only succeed in increasing the conflux. Perhaps the individual emigrant to the town does not define the instinct that draws him to the buzzing hives of men, but the pull of instinct is always toward the centres in which the conditions of life are easiest. From the tragic stories of want, overcrowding, unsanitary conditions, high rents, excessive cost of living, with all the resultant stunting and disease, one would not imagine these crowded centres of population would present a suggestion of ease, but the efforts of the charitable and of the social worker have the result of bringing about this impression. Illness from the cities' untoward influences is more probable in the towns, but one is in close touch with hospitals, with free dispensaries, with district nurses, with chemists—with all the means of mitigating bodily distress. The sick in countryside neighborhoods have ordinarily to depend upon unskilled friends or members of the patient's family for attendance, and, unable to command free medical aid, are driven to experiment with the ubiquitous patent drugs. No Boys' Clubs offer costly gymnastic appliances, talking-machines, moving-pictures, lectures or games to the farmer's son. He must drowse or squabble in the kitchen, or sneak away to the cross-roads grocery to eavesdrop at the endless dull gossip of the rural loafers. The country girl is not provided with the dances and music of the Girl's Friendlies, or the classes in typewriting, dressmaking, millinery or cooking of the Y. W. C. A.'s. The overdriven country mother cannot have her troublesome babies cared for at a crêche, or amused at a kindergarten while she faces the long days of her extreme toil. The child in the country school cannot benefit by free dentistry, free care from oculists, has no manual training in his preparation for life-work. The laborer in the soil has no means of raising the suddenly needed loan by pledging his property at the kindly provident loan society, or even with a less amiable pawnbroker. The country church asks insistently for contributions to support its feeble life instead of dispensing the alms of richer members in the nourishing and aiding of its poorer parishioners.

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The amusements are sparse and expensive in the country, the means of cultivation for eager minds are hard to come by, and in the face of such conditions it is natural that the rural population tends more and more to the centres where in ever-increasing volume provision for the needs of human beings is eagerly poured out by willing hands and purses, heroically endeavoring to supply all wants, make up all personal deficiencies.

Of what use is it to preach the evils of overcrowding, to vaunt the value of air and space to the eager girl and boy yearning for life, for opportunity, for amusement? Of what use to tell the parents that three generations of city life sap the vigor of the family? They are not the third generation. If the grandchildren are threatened with anæmia and stunting by urban life let *them* go back to the soil. The man and the woman want to live *now,* and they are more hopeful of getting what they need in their own time by moving into the radius of that incessant shower of interest and beneficence that gushes like a fountain from the kindly hearts of the town.

It is not that the country hearts are less kind, but the power of the many is so much larger than that of the few. A thousand dimes are so much greater in sum and efficiency than the dollar of one. It is useless to labor to hold back from the place where so much pleasure and help is to be had those who need pleasure and help.

This truth is becoming evident to a few, and those who are awaking to it are instituting a much-needed change of philanthropic base. They have been awakened to the necessity of a decentralizing movement in social effort. Instead of joining the cry of "back to the soil," they are pondering means to keep their neighbors on the soil by transplanting to it what the human plants need. They are plucking up courage to shut their hearts to the poignant cries for aid from the victims of the cities, and are devoting their energies to lessening the supply of the victims who so cruelly need that aid.

The first step in this new social effort is to recognize that in the country some of the advantages of the city must be afforded. The next, that concerted effort can achieve more than is within the power of any individual, and that the banded efforts of the countryside rightly applied will secure for the dwellers there the most desirable opportunities of city life.



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These leagues have been called by various names, but perhaps the most proper title would be "Societies for Minding Our Own Business." One early member of a neighborhood league thus defined the appositeness of this subtitle: "What is our own business? Why, to see that our taxes are properly spent; that the elected officials do their duty; that our roads are kept in order; the public health guarded; the laws obeyed; the schools maintained at a high standard; the beauty of the countryside preserved and increased, and that every one of us has an opportunity for healthful pleasure."

To which definition one of the women members added, crisply: "It's just good housekeeping on a larger scale. To keep one's house economically, to see that it's clean, wholesome, pretty and agreeable, and that the children are educated, is what every self-respecting woman among us is giving her energies to. Keeping the neighborhood is just a part of it, for the individual home is dependent on the neighborhood being well kept for its health, for comfort, beauty and for education. Attending to all this is certainly minding our own business."

Two communities, near New York City, with this idea in mind have formed leagues which include every local man, woman and child who is willing to work towards these ends; the wealthy summer residents, the local merchants, the clergy, the school-teachers, men and women of all trades and occupations, day-laborers and the children. The membership is divided into three classes: those paying twenty-five dollars in yearly dues, ten dollars and one dollar, but all three classes having equal voting rights and being eligible for office. Practically every member is an official, for the entire association is divided into committees on Membership, on Law and Order, Lights and Roads, Health and Cleanliness, Education, Libraries, Amusements and Neighborhood Improvement. Each committee works for its special object, but reports to the whole body and so dovetails its work into the efforts of the other committees as to make "one hand wash the other." As, for example, the committees on Health and Cleanliness, Law and Order, Lights and Roads, and Neighborhood Improvement combine in the work of seeing that the highways are well maintained and lighted, that they are kept clean, wayside trees planted and preserved, and that users of the highways are forced to observe the speed laws and rules of the

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road. The various committees again come together in keeping a supervision of the drinking-water and the ventilation of the schools, beautifying the school and library grounds, and making the library a centre for educational lectures, for musical and literary clubs, games and moving-picture shows, and talks on hygienic matters.

Convinced that the taxes paid, if honestly and economically administered, would make many local improvements possible which they now lacked, the leagues undertook to maintain a voluntary supervision of public works and expenditures with some very enlightening results. As one member expressed it: "If you paid your butcher for ten pounds of meat, and he only delivered two and a half, you'd be considered a feeble fool if you submitted to it, and yet that's what we're all doing about our taxes."

The local politicians were inclined to take a high tone at first with the Leagues' Committees, but on having presented to them a list of the voters enrolled in the association, they assumed a more conciliatory attitude, and a prompt enforcement of many neglected laws ensued, and money was found to be available for a number of necessary improvements.

Both of these leagues have founded and supported excellent libraries through local efforts and without appealing for outside aid. These are free to all the members, and the aim is to make them centres of the neighborhood's development. To make their grounds a model of the possibilities of beauty that can be achieved at small expense by the means of neatness and taste in gardening and planting. To use them as meeting-places for the local clubs, literary societies, singing-schools and musical societies, and for the encouragement of reading and study among the school children. For their support and development the local ball clubs charge admission to their games, dances are given, fairs and rummage sales held.

One of the leagues established a kindergarten where the busy country mothers could send their children "to be out from under their feet" during the pressure of morning work, assured of their being happy and cared for and receiving training and development in many ways. And the other turned its energies towards the development of manual training in the public schools.

A trained nurse has been hired by the year to give skilled

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assistance in illness to those who cannot afford to pay for such costly needs, and—incidentally—to teach a thousand needed lessons in hygiene and preventive medicine. It is hoped that eventually a small cottage hospital may grow up where prompt and not costly aid may save many who find it difficult to leave home in search of help from the great institutions in the city.

One committee compelled an abandonment of the deposit of sewage and garbage in local waters. Forced a new cleanliness in the care of cesspools; encouraged the burning of all waste matter; inaugurated a mosquito crusade and screening against the deadly house-fly. Another fitted up an old beach cottage as a bathing pavilion, where all the members might benefit, in cleanliness, comfort and safety, by their nearness to the health-giving salt baths. Seeds were distributed to the school children, and prizes were offered for the neatest and most successful cottage gardens. A permanent sales centre of local handiwork was instituted at one of the libraries, where orders could be given for any work desired. The larger gardens contributed their superfluous vegetables and fruit for the support of the libraries, insuring the supply of cheap, fresh and wholesome food at moderate prices for those without gardens. The libraries also served in a measure as local intelligence offices.

This is but a very slight outline of the efforts and the hopes of these societies for minding their own pressing and urgent business. Perhaps their greatest value has been in their social influence.

In all democracies the barriers between human beings are far wider and more rigid than in aristocratic countries. Where no differences are authorized the individual protects himself with far more sternness and impatience, and however the orator may prate in America of equality, every candid person is aware that the check-book divides man and man more completely than does the book of the Peerage.

In these leagues the teacher, the carpenter, the fisherman and the Italian "dago" meet in committees in the banker's or broker's or publisher's parlor to concert for the general good of the community. The butcher discovers, to his surprise, that the banker is a kindly neighbor, fond of telling funny stories, and free with his cigars when once he has broken through his shyness. The broker is equally pleased to discover how well-mannered, shrewd

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and able is the man who reroofed his house, and the publisher's wife finds the wife of her friend's gardener a sympathetic companion who likes the same novels and has the same views on bringing up children as she herself.

There is no need of settlement work here. Each leads his life as before, but gains a new respect and liking for his neighbors, a new understanding of the points of view, the difficulties, the hopes and aims of his fellow men and women. It was shown by the bringing together of the community that most of its richer members were contributing money and personal labor to help the poor of New York City, and yet rarely became aware of the illness and poverty at their own doors.

The leaders in this new movement hope to see it grow, and look forward to a not very distant day when every county will have its dozen or more leagues, all uniting to send delegates to a central county committee. They look forward to, in this way, purifying local government and checking the headlong flow of all charity and philanthropic efforts to the cities, and the consequent and inevitable drift of the people to where it is to be found. They have heard so much of the "reconcentrado camps" of the cities, with their attendant horrors, that they have begun humbly, but hopefully, to inaugurate a deconcentrado movement. They are convinced that that there would be less need for minding other people's business if there was an earnest and concerted effort to mind our own. That by this concerted effort it will be possible to bring to the rural communities very many of the pleasures, the aids and the opportunities offered by the cities. That instead of telling the people to go back to the land, it is better to so enlarge the scope of life upon the land that they will not wish to leave it.

ELIZABETH BISLAND.

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# THE NEW POLITICS.

## PARTIES AND MEN.

BY WILLIAM GARROTT BROWN.

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NONE of us are entirely content with our political parties as they are. A good many of us hardly ever mention them except to abuse them. But only one prominent American, Mr. W. R. Hearst, has of late years made any persistent effort to get rid of the old ones and substitute new; and he does not seem to have had any great success. No one has seriously proposed that we try to get on without any parties whatsoever. Parties of some sort are the only device we have for making our Government work. We can deal with the issues presented by the new politics only through parties; through the old ones if they do not divide too hopelessly when they come to face those issues; through new ones if they do. In any case, however, we shall at least begin with the old parties.

I will repeat the statement I have made of what seems to me the present task of democracy in America, the problem presented by the new order which has come about in industry and business almost simultaneously with the final coming of the Republic into a sense of the limitations of its material resources. The present task and problem of democracy is twofold: to secure for the state, the people, some effective ultimate control over the natural sources of all wealth; and to secure, in an industrial system no longer controlled by competition, protection and opportunity for the individual.

The contest now forced upon us is, of course, but another form or phase of the immemorial struggle with privilege. But the phase of that struggle upon which we are now entering may, I think, be not unreasonably considered the most important, the most crucial of all. And for this reason: The kind of privilege

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with which we must now join battle is the product, not of monarchy or aristocracy or priestcraft, but of democracy itself. It has grown up out of a free soil. The new organization of industry into great combinations, which has gone so far towards crushing out competition, began itself in the freest competition; it was in fact accomplished through the methods of competition. First competition, then absorption — that has been the process. But for the freedom which our laws and usage allowed—the free play they gave to all kinds of ability, the opportunity they opened to all kinds of talent—it is doubtful if these tremendous aggregations of energy and wealth and system could have been built up so swiftly. Certainly, no country where the older forms of privilege prevail has ever matched them. Being, therefore, products of a society established in opposition to the entire conception of privilege, they may seem to prove that there is something in the very nature of great human societies which makes for privilege—that there is something, perhaps, in human nature that makes for it. But whatever the fundamental trouble, the root of the evil, may be, it is not entirely unreasonable to hope that this time, since we are dealing with a kind of privilege native to democracy itself, we may eventually get at it. What I mean is that we may eventually find our struggle turning into a warfare with the very life-principle of privilege; that it may, therefore, prove to be the final war—the last of the long series that began either with the first raising up of the head of authority in some pristine democracy or else with the first glimpse of the face of freedom in some original despotism.

That, of course, is a long, long hope; and these are large and bold conceptions. To pass from them to a study of our Democratic and Republican parties of to-day is rather an anti-climax—like turning from Burke or Milton to the newspapers. But I know no other way to be practical.

The tendency in all self-governing or partly self-governing societies is to have at least one party which is distinctly, at any rate habitually, the party of privilege and at least one party which is habitually opposed to privilege. There may be other parties, advocating special causes. One or the other of the two great parties may from time to time split and divide on particular issues. They may both from time to time fall into inconsistencies, failing to adhere to their essential motives and life

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principles. All sorts of departures and variations occur. But this remains the normal division and alignment. One may prefer, with Mr. Bryce, to call one party the party of order and authority and the other the party of progress. But the choice of words is not particularly important. The general character of the division is fairly well indicated by either set of terms.

I have elsewhere ventured to argue that Mr. Bryce and de Tocqueville, and other foreign observers as well, have erred in denying that the two great American parties have stood, on the whole, for this normal party division, and I still hold that opinion. But I admit freely that none of our parties has stuck steadfastly to its proper rôle. Apart from the forces that ordinarily make against consistency in politics, the Federal form of our Government has been the cause of a long series of divisions—divisions over the powers of the States and of the Nation—that have often obscured the more universal division. Now and then these old questions—questions of State rights and Federal powers—reappear. But they have lost their heat. They have lost much of their interest. There is something academic about all the present-day discussions of them. I think it is clear that they now play a far less important part than they used to play in our politics, and have much less effect than formerly on our party divisions. These may, therefore, be expected to follow hereafter more closely than they have hitherto followed the general usage of parties in representative governments. One will stand rather more distinctly than formerly for order, authority, system, effectiveness; and that will be the party through which privilege will most naturally seek protection and extension. The other will rather more distinctly than formerly stand for democratic aspiration, for the rights and the hopes of the individual, for equality of opportunity; and that will be the party which on the whole will offer the most antagonism to privilege.

But of the two great parties now in existence, which will be which?

Until quite recently, I do not think many of us would have hesitated on this point. Although the Republican party began as the party of freedom, of manhood rights, and in opposition to one of the worst forms of privilege that ever existed, the institution of slavery, I think most of us would have said that in its later history it has been pretty distinctly the party of order

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and authority in this country, and therefore the party to which privilege would most naturally look for favor and protection. It has had that character for several reasons. It has had a majority of the wealthy in its ranks, and it has naturally been more responsive to their views than its rival. It is the party to which people who have had, as the saying is, a stake in the country have naturally gravitated; and one potent reason for their coming into it has been its long ascendancy, the long lease of power which the country granted it after the Civil War. It has had control of the Government. Strong, successful, practical men have turned to it because it could do things, and men of that character have become its ruling spirits. Great interests of all kinds have attached themselves to it. As it gradually committed itself to the policy of protection, those who profited or hoped to profit by that policy became inseparably attached to it. As the issues which it was formed to meet disappeared its character changed. It became more and more the champion of the great interests which filled its campaign chest and demanded in return the legislation they wanted. A more thoroughly business-like party never existed. It has for decades commanded the best practical ability in the country. As our industrial system altered, when first the great corporations were formed, and then the trusts, until from many fields competition disappeared, nothing was more natural than that the men at the head of the great combinations should find this party sympathetic. They were the same kind of men, not infrequently they were the same men, who were already dominant in its councils. Both from its composition and from its association with great business interests, the Republican party was apparently certain to become the political representative of the new order; the representative of power; the representative of wealth; the representative of combination as opposed to competition, of co-operation and co-ordination and system as opposed to individualism; the party, therefore, of privilege—of the new kind of privilege.

Certainly, its rival was not well fitted for that rôle. The Democratic party had, it is true, at a certain time in its history, stood for a great special interest. The long lease of power which it enjoyed before the Civil War had the usual effect of power on a party of liberal principles. It grew more complacent with things it had come into existence to oppose and less fiery for the ideas

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it had come into existence to advance. It became more complacent with authority, less fiery for liberty. The genuinely democratic impulse which it had received in Jefferson's time and again in Jackson's had no renewal under Polk and Pierce and Buchanan. While it was in this state the slavery issue came to dominate all others; and both the old parties divided over it. The Whig party went to pieces. Among the Democrats, the Southern or pro-slavery faction got the upper hand and kept it until the disruption of 1860. Unfortunately, two truly democratic principles, the principle of individual liberty and the principle of local self-government, both thoroughly sound within reasonable limits, had been brought, by the anomalous fact of slavery in a republic, into a kind of conflict. The distracted party held to the principle of local freedom, of State rights, and abandoned the principle of individual liberty, of the rights of man. The slavery interest, the very greatest single interest in the country, for a time controlled it. For a time, therefore, it may be said to have been the party of the established order, the party of privilege.

But for the last half-century the Democratic party has had very little of the power that corrupts and demoralizes. Neither has it had the kind of membership that would make it complacent with privilege, nor yet have the great material interests attached themselves to it. It has, indeed, from time to time won as recruits independent men of wealth; but its principal gains have been among the working-people of the great cities, particularly among the foreign-born and among the plain farmers of the West. The old slave-holding interest of the South has, of course, disappeared, and the large Southern membership of the party has had, since the war, an influence on its policy very different from that which the slave interest exercised before the war. For the South has been poor; it has been relatively weak; it has felt itself on the defensive, on the outside of things and not on the inside. In the South, moreover, the plain man, the man with neither wealth nor distinction of birth, has been steadily coming to the front. The old Southern aristocracy has lost its political ascendancy, and the new industrial oligarchy has been slower to develop there than elsewhere. The voice of the South in that party has accordingly been, since the war, the race issue alone apart, decidedly against any kind of condoning of privilege.

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On the whole, therefore, I think we may say that as the new issues began to force themselves upon the country, as the great changes in our industrial system came about, and the new kind of privilege began to make itself felt and understood, it was decidedly the Democratic party to which one had best reason to look for opposition to that new kind of privilege. That was the party which seemed, on the whole, to have decidedly the best right to claim support as the party of individual liberty, of democracy in the full meaning of the word.

And that, I think, has been its real bent. For the past ten years its specific proposals have been, for the most part, unfortunate. It has suffered also from bad management, from bad organization, from factional divisions. It has suffered from lack of intelligence. As contrasted with the business-like control and direction of the Republican organization, its leadership has been pitiably weak. The party has been distrusted, and the people have refused to grant it power, because they have felt it to be incoherent, unbusiness-like, ineffective, more like a mob than an army—but not because it has not been democratic in animus and temper and composition. For years, in fact, it has wanted only able and intelligent leadership and firm organization to commend it to popular favor. A majority of the American electorate would many times have preferred to support that party if they had not been afraid to.

Such, then, was the general state of both parties when the new aspect of industry and finance forced itself upon the attention of the people in a way to demand a distinctly political attention. Then two things happened which have profoundly altered the party situation. One was Mr. Roosevelt's promulgation of what have come to be called the Roosevelt policies. The other was the Progressive or Insurgent movement in the Republican party.

The two things were certainly not unrelated. Which began first will doubtless in the future be discussed by historians, but to determine whether ex-President Roosevelt really got his cue from the Western Progressives or they got theirs from him is not of the first importance. Both he and they had come to feel that to retain the confidence of the country their party must somehow counteract the impression, already wide-spread, that it was subservient to great private and corporate interests; that it must,

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therefore, strike out on a new line and consider more candidly the changed conditions of industry. Both he and they had vision enough to see that there was growing up and becoming powerful in this country a kind of discontent somewhat different from that which has produced most of the revolutions and political overturns of the past; a discontent not so much with actual as with relative material conditions, not so much with actual suffering or poverty as with inequalities, and particularly inequalities of opportunity.

The fact and the volume of that discontent in America is a striking and a creditable thing. Many of our people who are most dissatisfied are living fairly comfortable lives. They do not lack bread or shelter. They have work, and their earnings seem, as compared with the earnings of the same kinds of labor in other countries, decidedly high. But they see other men enjoying not merely greater wealth, but a kind of power which they themselves cannot hope to attain. They perceive that they are mere parts of systems, the control of which has passed to a few men; that these systems are growing constantly bigger and absorbing more and more of the industrial energy of the country; that it is, therefore, no longer reasonable, as it once was, for every man of character and intelligence and energy to hope to make himself the independent master of his own business, whatever it may be. Instead of that, they find all the main industries, including the various forms of commerce, tending to combination and consolidation, with a very small group in control, and the workers of all but the highest grade or rank deprived completely of initiative, and indeed reduced to be mere parts of a great machine, valueless and powerless if detached. Of course this change has caused some actual hardship. But the discontent with it has been something more than a mere clamor for a bigger share of the good things of life. The democratic instinct, the instinct and principle of individualism, of independence, of human rights, has been at the bottom of it. That instinct has taken alarm, and the alarm has spread through both the parties. The reason why this feeling has had more striking and visible effects in the Republican party than in the opposition has been that it had more to overcome in that party than in the opposition.

Whether we give the credit for originality in this matter, for first perceiving the coming on of a new democratic impulse, to

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ex-President Roosevelt or to the Western Progressives, whether we consider that he acted as patriot and leader and prophet or only as an astute politician, there can be no denying that his political instinct was keen and correct. But ex-President Roosevelt, when he went out of office, had merely announced a general policy concerning the combinations and had done little more than that concerning the conservation of our resources. And even in his very general announcements of policy he on one point either differed from the Western Progressives or at least failed to go their lengths. He made no attack on the system of high protective tariffs. He failed, therefore, to strike at all at that particular bond between his party and the great interests which many have regarded as the least defensible of all. The Western Progressives did strike at it, and it was that part of their programme which, as we all know, brought them first into open conflict with the conservative wing of their party.

That conflict has now widened and deepened into a positive breach or schism which cuts through the party everywhere except, perhaps, in the South. The division has, for the time being, altered the face of American politics, and it has upset all calculations and forecasts.

To attempt a forecast even of the course of the schism itself would be venturesome. But either the Progressives or the Conservatives will win, let us say, in their present fight for control inside the lines of the party lines. If the Progressives win, the party will be profoundly changed. But in that case the chances are at least even that the Conservatives will not withdraw; they may feel that they have no other place to go; and if they remain in the party their presence will be enough to keep it from becoming radical—to keep it from becoming more than moderately liberal. If, however, the Conservatives win, the Progressives are not so likely to acquiesce and remain loyal. On the contrary, there is a very strong probability that they will secede; that they will either attempt a new movement and organization of their own or join with the present opposition or some part of it. It is a question, therefore, whether they or the present Democratic opposition will be the true liberal party of the future. But to that liberal party of the future, whatever form and name it may take, both the Progressive Republicans and the present opposition will contribute of their membership; and, on the other

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hand, we may be sure that wherever, in the new alignment, the Conservative Republicans, the so-called "Stand-patters," the men who for some decades have been the real rulers of this country—that wherever these shall find themselves, there will be the party of authority and order, the party of the new kind of privilege. To them will doubtless be joined many conservative men, Tories in temperament or by conviction or from the character of their personal interests, who now call themselves Democrats. The composition of the two parties of the future seems in fact fairly easy to predict.

But whether they will be two new parties, with new names, or merely the two old parties materially changed in composition and much more sharply differentiated in policy than they now are—that depends on the character and the effectiveness of the leadership of the immediate future. A leader of the Republican Progressives comparable to Hamilton or Jefferson or Lincoln could in all probability make of them a true and complete party, so strong that a great part of the opposition would in the long run be drawn into its ranks. The rise of such a man among the Democrats would, on the other hand, probably have a precisely contrary effect.

There are people, many people, who feel that the Republican Progressives already have such a man. There are also people, though not so many, who would contend that the opposition has such a man; and the claims of this sort that are made for Bryan are as sincere as those that are made for Roosevelt. But they are not at present taken so seriously. It is said that Mr. Bryan has been for years proclaiming the issues and advancing the ideas which are now transforming our politics; that he was in this respect far in advance of Roosevelt. This is measurably true. There are demands in the Progressive programme, there are "planks" in Roosevelt's Ossawatomie "platform," which were urged by Mr. Bryan before the terms "Progressive" and "Insurgent" came into use, before Roosevelt became President and announced his policies. But along with these things Mr. Bryan has put forth other ideas, other proposals, which have been utterly and deservedly rejected; and he has supported them with a kind of reasoning which many of us find not merely shallow and unconvincing, but culpably sophistical. Whatever sincerities and whatever soundness there may be in him, a great body of

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thoughtful and sober-minded Americans, many of them members of his own party, are fixed in the conviction not merely that he is an untrained mind, a mind lacking in judgment as well as training, but that he is too unstable to be trusted with power. It is hardly conceivable that his prestige and his hold on public opinion will ever be greater than they have been. They are now less than they have been; and they seem likely to continue to diminish.

With Roosevelt it is different—very different. He still fills the public eye as no other man of the time has done. Apparently, his going out of office has not lessened at all the interest in his personality and his career or at all narrowed his extraordinary access to public opinion. It is many years since any American has had so great a fame as his or such obvious and wide-spread influence. Every public utterance he makes reaches the entire country. He can have an instant hearing for any proposal, any contention, he cares to put before the Republic. Moreover, he plainly desires to continue to lead. He seeks to put himself at the head of the Progressive Republicans; and all the signs are that the majority of the Progressive Republicans wish him for their leader. When, therefore, it is asked, why he is not the man of the hour, the man of the age, the man providentially raised up to be the captain of all the forces of democracy in the warfare against the new kind of privilege, a convincing answer does not at once frame itself.

He will not fail to play that rôle from any lack of energy or of shrewdness or of the instinct for affairs—the instinct of leadership. No more skilful politician, in the full and not invidious sense of that much-abused word, has ever lived in this Republic, if in any Republic. It is by no means preposterous to compare him with either Cæsar or Napoleon if one has in mind only their civil and not their military characters and careers. Neither in revolutionary France nor in the overgrown and decadent Roman Republic could such a man have been kept down. His detractors merely hurt their case when they refuse to acknowledge the uncommon force there is in him. In face of his actual performance in self-advancement, it is difficult to doubt that he possesses "the thews that throw the world." Perhaps it is true that he has no particular gift or power which can properly be called genius; that he has won his battles solely by an extraordinary use and

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development of gifts not extraordinary in themselves. But that does not leave him any the less extraordinary in the actual effect. Such will and energy are themselves as rare as genius—and far surer to prevail. It is they, in truth, that make the conqueror as we know him in history; and that is plainly the type to which Roosevelt belongs. His sleepless ambition and ever-growing egoism are entirely in keeping with it. The frail body disciplined to robust strength and hardihood, the student and idealist turned into the ultra-practical man of affairs, the halting speaker and writer become a monopolist of public utterance, the appetite for action and for power, once aroused, growing ever with what it feeds on, until it is become insatiable—what is all this but the normal course and development of the character that all through history has belonged to the setters-up of dynasties, the regenerators or overthrowers of kingdoms, the founders or the subverters of republics?

Fairness will concede extraordinary attraction as well as extraordinary force. There have been admirable, even noble, impulses; the gift of comradeship; zest in human relationships, and love of nature, and joy in life; integrity in private dealings, and continence, and domestic virtues. There has been, of course, courage always and an inspiring sense of opportunity and of the range and possibilities of life. There has been a ceaseless intellectual activity, never, it is true, particularly fine or original, but keen and quick and wide of reach, playing over the entire field of human interests. It is a personality that can win as well as overcome.

Yet I cannot feel, and I do not believe that many dispassionate and painstaking observers of this career can feel, that here is the right leader of our American democracy in its present crisis. Many, on the contrary, are coming to feel that in precisely such a man there may be more immediate danger to the American democratic ideal than even in those new industrial forces against which his leadership is invoked. It is becoming a commonplace that those forces and our present industrial conditions were not contemplated when our system was founded; that the fathers did not foresee them and could not, therefore, set up safeguards against them. But the fathers were not without forethought of the danger of the coming of such a man as is now risen up among us—a man too popular, too powerful, and too ambitious. It is

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clear from their debates that they had in mind both the misadventures and the preventive usage of the ancient and mediæval republics, in every one of which there dwelt a constant terror of the man too long in power and in the public eye, the man with too great a following, the man too pre-eminent above his fellows. It was of the essence of the spirit of the ancient republics, as it was of the spirit of Republican Florence, not to expect to find the virtue and forbearance of their great men equal to their strength, and to refuse, therefore, to risk the safety of the State upon the doubtful hazard of the conflict of ambition and patriotism in any human breast. Our own founders limited the term for which a President could be elected to four years, and they also undoubtedly intended the device of an electoral college to operate as a check upon popular impulse. That device failed. But when Washington retired at the end of his second term his example was quickly seized upon and converted into a precedent —a precedent which has hitherto proved strong enough to keep any of his successors from serving longer than he did.

That precedent has undoubtedly had great weight with the electorate, but it has also had the effect of an admonition and an appeal to Washington's successors themselves; and to not one of these has it ever appealed so logically as it does to-day to Theodore Roosevelt. All that I have said and all that can be said, in praise of his character and his achievement, merely makes it so much the more applicable to his case. For the kind of danger contemplated in the apprehension which has made that precedent so effective could not come from a weak man, but only from a strong man; it could not come from an unpopular man or a man generally distrusted, but only from a man grown too popular, a man trusted too widely and too slavishly. Of course, too, the man to be feared must be ambitious, and that Roosevelt has from first to last been keenly ambitious even his admirers do not deny. He has proved himself not merely ambitious, but of an imperious and arrogant impatience with whatever hinders or stays him, whether it comes from men or from laws. With men he has again and again displayed, now a tyrannous and coarse violence, now an indirection and sharp practice, which simply cannot be condoned. However one considers such things as his dealings with Quay and Platt and Harriman, or his brutal fury with his critics of the press and with Judge Parker and other



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political rivals, or his entire behavior concerning campaign contributions in 1904, or the bullying and unfairness with which he has repeatedly met opposition, one's republican instincts and one's instincts as a gentleman are equally outraged. With laws he has been even more high-handed than with men. From first to last he has been egregiously lacking in that scrupulous and reverent sense of law, of precedents, of institutions, which has been hitherto the rule of both American and English statesmanship, and none of his public utterances shows the lack of that sense more glaringly than his recent setting forth of the "New Nationalism." Of all his predecessors in the White House only Andrew Jackson can be compared to him in this respect. And Jackson, demoralizing as his "reign" was, never was half so really dangerous. For Jackson had no such consuming ambition, no such sweeping designs of change; and when he came into national power he was already elderly and infirm. Should Roosevelt again take the first place in the Republic, no one would expect to see him conduct himself as an ordinary President in time of peace. His power would be greater than Jackson's at its height; and there is every reason to believe and none to doubt that he would wield it with a worse than Jacksonian disregard of legal and constitutional limitations.

One may have the firmest faith in our system and still shrink from submitting it to such a strain. No doubt, Lord Morley's observation in "Compromise" is sound: A reasonably healthy state has immense strength; it has abundant reserves of vitality to throw off disease and recover from shocks and confusions and derangements of its order. But every departure from its right order, every lapse from its essential principles, leaves it more open to the next. I do not believe that Roosevelt, I do not believe that Napoleon or Cæsar, could in a day or a generation subvert the institution of this country; but not for that reason ought a Napoleon or a Cæsar to be welcomed; and not for that reason should any intelligent American disregard the danger that there is in Roosevelt.

Clearly, unmistakably, the precedent we have made from Washington's example is apposite, applicable. The warning of it comes home. It warns us against him. But may we not hope that also, since he also is an American, since we need not believe that he does not really love his country, it will in time, and

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potently, warn him against himself? That he will yet, and in time, take to heart some of the words forever on his lips, and read aright the lives he has so often commended to us—Timoleon's, Hampden's, Washington's, Lincoln's? That he will learn at last the supreme nobleness, rise to the supreme opportunity, of self-abnegation? That the ideals of youth will yet revive in him and conquer the coarser impulses of manhood? That he will yet, and in time,

"Curb the liberal hand, subservient proudly"?

By no conceivable self-assertion could he now render to his country such a service as it is open to him to render by crucifying his own ambition; and in no other way could he make his own fame so secure. Nor would the act cut him off from such service, such leadership, as would in truth be most truly valuable to the country and most honorable to him. Let him once pledge himself in plain words never again to seek or to take the Presidency, and his power to advance causes, his hold on public opinion, his opportunity to contribute what he has to contribute to the solution of the new problems, would not be less, but greater. If, however, he will not do that, his leadership, so far from helping us with our new perplexities, will merely complicate them with the old problem and danger which from time to time has beset every experiment in republican government—the problem and danger of "the man on horseback."

We shall proceed better, because more safely, more in accord with the spirit of our own and the English law and usage and institutions, with less risk of either destroying what we have or establishing what we shall have to destroy, if we go on without recourse to anything at all in the nature of a dictatorship. Our emergency is not of the character that demands such a remedy; nor could such a remedy work us any lasting good. Our need is of a permanent adjustment to conditions likely to endure; of laws thoroughly considered and carefully framed; of deep-reaching changes in our social habit and usage—such changes as can only be brought about slowly, with a wise patience. For work like that such a temper as Roosevelt's would be almost the worst conceivable. That of his successor, though less inspiring, is far better. But it is doubtful if any one man's leadership will bring us far upon our road. For the long and hard enterprise now be-

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fore democracy in this country the best abilities of many men will be needed, and those abilities will need the best training to be got from schools and colleges and from life and experience. There must be an extraordinary co-operation, a difficult and unprecedented bending of countless energies, in many fields, to the same general and impersonal ends. Ordinary popular leadership will not suffice; from the one-man power in whatever form, from masterful and swift determinations of whatever kind, we have little to hope. American politics are become a hard occupation. The Republic has never before demanded a more serious and patient attention to its affairs, or from so many men. For, whatever the changes that shall in the end make our system valid and firm against the new conditions, they must extend through the whole of it, in all its Federal vastness. The test to which our public opinion and our great electorate are thus submitted is no less than this: that there must be a wide-spread, an intelligent, and a stubborn patriotism.

The demand of the Republic for many men who shall be not merely patriotic, but of a high intelligence and highly trained, who shall combine common honesty with shrewdness and insight, is indeed severe. And for the difficult service demanded the reward may not be high. It may well be martyrdom instead of gratitude; to be misunderstood rather than to be honored; to be used and then cast aside.

But the immemorial promptings to nobleness abide. It is, after all, service and not self-seeking which oftenest in the end prevails. Though many men who seek only their own advancement or their own profit in this country's affairs win to their goals and have their low desire, they and their works pass swiftly.

"In the unscarred heaven they leave no wake."

They who, on the other hand, give themselves sincerely to the common service—and they, too, are many, for it is not for nothing that we have been so long a free people in a favored land—will find that what they have wrought will stand; that it has been as if some gracious and tutelary power guided their hands to noble and enduring workmanship. They will find—as good men always find in the end—that they have builded better than they knew.

WILLIAM GARROTT BROWN.

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# L'ECOLE PRIMAIRE EN FRANCE EN 1910.

PAR PAUL SABATIER.

Si l'éminent Editeur de la North American Review m'a demandé une étude sur nos écoles primaires, c'est qu'il désire, j'imagine, non pas des données statistiques sur le nombre des écoles, des élèves, des instituteurs ni même des indications sur les programmes, sur le recrutement du personnel enseignant, sur les locaux scolaires, sur les lois qui régissent notre éducation nationale élémentaire,—renseignements extérieurs et matériels en quelque sorte, fournis avec une parfaite exactitude par les expositions internationales,—il désire un aperçu de la situation intellectuelle et morale de nos écoles, une sorte d'examen de conscience, dans lequel un Français indépendant se demandera où en est l'instruction primaire de son pays à l'heure actuelle et vers quel avenir elle s'oriente. C'est là, du moins, ce que je vais m'efforcer de donner. S'il a songé à me proposer ce sujet, cela vient aussi, sans doute, du retentissement qu'ont eu à l'étranger les très vives critiques dirigées contre l'école laïque de France par le S. Siège et une partie de la presse catholique romaine.*

* Cest très intentionnellement que je m'exprime ainsi, car, si l'on veut être juste et exact, il faut bien se garder de confondre soit le gouvernement de l'Eglise, soit la presse cléricale avec la masse des catholiques. Nous faisons la distinction entre nation et gouvernement, quand il s'agit des peuples: il faut apprendre à la faire en ce qui concerne les églises. Vers la fin de septembre, 1909, les agences télégraphiques répandaient la nouvelle d'une "Lettre pastorale collective des cardinaux, archevêques et évêques de France" contre l'école laïque. Je puis affirmer de la façon la plus catégorique que ce document, daté du 14 Septembre, 1909, est bien loin d'être l'œuvre libre et vraie de ceux dont il porte la signature. L'idée même en avait été suggérée un an auparavant, à Rome. Les efforts tentés pour la faire rédiger par l'épiscopat français ayant échoué, le S. Siège se décida à faire lui-même ce travail et ne fit appel aux lumières des prélats français que pour des détails et la forme extérieure du document. Quand il fut publié, plusieurs évêques, dont la signature avait été apposée d'office, ne connaissaient même pas sa teneur exacte. Le but évident de cette offensive inattendue était de frapper vivement l'opinion publique à la veille des élections législatives. Le résultat fut celui qu'on méritait: le dédain devant ces tentatives, et la déroute des candidats adversaires de l'école laïque.

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Nos écoles primaires publiques, les écoles laïques comme on les appelle d'ordinaire, sont très mal connues: d'abord, parce qu'en France même elles ont des adversaires résolus, qui ne sont qu'une très petite fraction de la nation, mais qui disposent de puissants moyens d'action; puis, parce que les étrangers qui les visitent sont naturellement disposés à les comparer à l'école primaire de leur propre pays. Or, cette comparaison involontaire, fatale peut-être, est une erreur de méthode. L'enseignement primaire a chez nous sa physionomie propre, comme dans chaque pays. A certains égards il est peut-être inférieur; à d'autres il est certainement supérieur. Cette étude aura pour but de préciser, si possible, son originalité, d'indiquer comment l'instituteur, en particulier, comprend sa mission. S'il fallait, dès maintenant, noter une différence intime entre l'école française et celle des nations les plus évoluées, on pourrait dire que la nôtre vise moins à instruire qu'à éveiller. Nos écoliers sont moins munis de connaissances pratiques, leur mémoire est moins meublée, leur main moins exercée; mais leur intelligence est plus désireuse de poursuivre son travail et ses efforts. La grande préoccupation du maître n'est pas, comme en Allemagne, de préparer chaque enfant à devenir un rouage bien discipliné d'un grand Empire, elle est de l'aider à donner sa note personnelle, à déployer ses énergies propres. On lui inculque surtout des idées; on fait sans doute effort pour se rappeler que demain il sera commerçant, ouvrier ou agriculteur, mais le but que l'on se propose n'est pas tant de le préparer à avoir une situation prospère, matériellement indépendante, elle est de faire de lui une individualité capable d'initiative, ne fuyant pas les responsabilités, dirigeant sa vie, capable de lutter contre ses propres instincts, considérant l'abdication du citoyen devant la force matérielle comme la honte suprême. Et ce n'est pas là quelque chose de voulu ou de cherché; c'est le résultat des circonstances, des mœurs, d'une longue évolution historique.

Il n'y a pas de question sur laquelle les Français soient en plus vif désaccord que sur la question de l'école: le Français clérical veut que l'école soit en quelque sorte le porche de l'Eglise; le Français anticlérical veut que l'école prépare l'enfant à l'exercice indépendant de sa pensée: mais, comme on le voit, les deux adversaires s'accordent sur l'essentiel, ont des préoccupations au

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fond identiques. L'école, orientée vers la conquête du pain ou du bien être, ne les satisferait pas plus l'un que l'autre.

Est-ce un bien? Est-ce un mal? C'est un fait, qu'il faut constater et ne jamais perdre de vue. Il montre pourquoi la France dans son puissant effort scolaire ne peut pas songer à aller chercher des exemples ou des conseils à l'étranger, et pourquoi aussi elle comprend si mal les crises scolaires de l'étranger.

L'école laïque, corps et âme, date, comme tant d'autres choses en France de 1870. Les régimes antérieurs avaient eu des écoles; mais, jamais, comme en 1871, un irrésistible courant ne s'était formé, d'un bout à l'autre du pays, en faveur de l'éducation publique. Battu sur les champs de batailles, obéré par une formidable contribution de guerre, le pays se recueillait, séchait ses larmes, regardait ses frontières et pensait peut-être encore plus à l'effort intime qu'il devait faire pour reconquérir son rang moral.

La France, qu'on croyait blessée à mort, faisait déjà un rêve sublime, celui de mettre à profit les leçons de sa défaite.*

Elle se tourna vers ses conducteurs spirituels, elle envahit les cathédrales, se porta vers les sanctuaires anciens, en improvisa de nouveaux; partout, ou à peu près, elle rencontra des prêtres désireux de la secourir, prêts à organiser des messes de *requiem* pour les soldats morts au champ d'honneur; mais ces excellents prêtres croyaient guérir toutes les blessures de la patrie, en racontant des apparitions de la Vierge, ou du Sacré Cœur, et ne comprenaient pas qu'on attendît d'eux autre chose encore: le viatique nouveau d'une étape nouvelle.

A ce peuple, qui aurait eu besoin d'un nouveau Moïse pour être conduit vers un nouveau Sinaï, on recommandait quelques dévotions mécaniques, sans contact avec son cœur et son intelligence. A ce peuple crucifié, qui aurait eu besoin d'un nouveau Christ pour lui parler de résurrection et le conduire vers la montagne de l'Ascension, on prêchait la guerre contre l'Italie pour aller restaurer le pouvoir temporel, on conseillait un pélerinage

* Si l'on veut se faire une idée un peu exacte des sacrifices que la France s'est imposée au lendemain de ses déroutes pour la réorganisation de l'enseignement primaire, il faut étudier les débats parlementaires. On trouvera tous les documents principaux pour la période 1870-1882 dans le magnifique Dictionnaire de Pédagogie publié sous la direction de F. Buisson. Paris, 4 vol. in 8o, 1882-1887.

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à Montmartre, à Paray-le-Monial, à Lourdes ou à la Salette. Ce fut une déroute pour l'Eglise. Elle ne comprenait pas plus le langage de ses enfants, que ses enfants le sien.

Cette incapacité du catholicisme à se mettre à la hauteur de sa mission, cette abdication tacite de son empire sur l'âme du pays avait été précédée d'une autre expérience, sur laquelle les historiens contemporains n'ont guère insisté, et qui constitue pourtant un des grands courants d'influence intellectuelle qui ont façonné la conscience de la France actuelle.

Avant 1870, l'élite du pays avait été élevée dans une sorte d'admiration de l'Allemagne. Dans les universités, les professeurs parlaient de la science allemande sur un ton de respect qui auréolait tout ce qui arrivait d'au delà du Rhin. Beaucoup d'esprits distingués se rapprochaient du protestantisme, cherchaient à le propager, parce qu'il leur paraissait comme la cause efficiente de la prospérité intellectuelle et morale du peuple allemand. La guerre arriva, et s'il y eut en France quelques insensés pour la présenter comme une sorte de duel entre les deux civilisations catholique et protestante, des voix allemandes qui, elles, étaient autorisées, la présentèrent comme une croisade sainte. On vit, jour après jour, l'empereur lui-même et ses collaborateurs, qui avaient sans cesse le nom de Dieu à la bouche, écraser une nation au nom du droit du plus fort. Chacun des bulletins de victoire de Guillaume Ier remerciant le Dieu des armées, n'était pas seulement une goutte de plus au calice du vaincu, c'était un scandale qui blessait sa conscience. La religion allemande apparaissait comme une utilisation blasphématoire de Dieu et de son Christ.

Telle était la situation morale de la France au lendemain de la guerre: son Eglise n'était pas capable de lui venir en aide; quant au protestantisme, elle avait en quelques mois perdu ses illusions sur lui.

Voilà comment et pourquoi, du jour au lendemain, tout notre peuple se tourna vers l'école, l'acclama, et lui demanda de répondre à des préoccupations auxquelles l'école ne répond dans aucun autre pays.

Ce ne sont ni les volontés du législateur, ni les efforts des instituteurs, ni mêmes les habiles manœuvres de quelque secte qui donnent à l'école en France une mission nouvelle, c'est la force même des choses.

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L'âme de notre école est le résultat des désastres de 1870 et tous les efforts pour revenir à la notion de l'instituteur telle qu'elle était auparavant ont échoué.

Notre instituteur n'est pas seulement un instructeur. L'administration est naturellement portée à voir en lui surtout un mandataire de l'Etat, pour ne pas dire du ministère; mais lui se sent une tout autre mission: il aspire à être le porte-voix de la petite patrie, la France, et de la grande patrie, l'humanité. Dans certains salons et dans beaucoup de sacristies on sourit devant ces prétentions, on plaisante volontiers les visées des philosophes de village. Peut-être serait-il plus élégant encore de voir que le simple désir d'aspirer à jouer ce rôle idéal est déjà un commencement de réalisation. Le peuple de son côté veut sans doute que ses enfants apprennent à lire, à écrire, à compter, mais il veut surtout qu'on les prépare au rôle de citoyens et d'hommes.

Comprend-on maintenant pourquoi au moment où la France paraissait appauvrie et même ruinée pour longtemps, elle trouva d'inépuisables ressources pour bâtir des écoles? On a souvent répété la phrase de ce chroniqueur du Moyen âge qui dit qu'au XIII siècle la France s'émailla d'innombrables églises, comme une prairie qui au printemps s'émaille de fleurs. Un élan analogue s'est manifesté depuis 1873 pour la construction des écoles. C'est, à bien des siècles de distance, la même cause se manifestant par des réalisations un peu différentes. Ceux qui aujourd'hui bâtissent les écoles sont les très légitimes fils de ceux qui bâtirent les cathédrales. La France est restée fidèle à elle-même et ce sont seulement des gens de courte vue qui peuvent voir une antithèse entre la cathédrale d'hier et l'école d'anjourd'hui. Malheureusement l'administration de l'Eglise fit tout de suite cette opposition.

Tout de suite et par tous les moyens, elle s'efforça d'empêcher le vote des lois consacrant la gratuité, la laïcité et l'obligation. C'est au S. Siège, à une minorité d'évêques batailleurs, et surtout à une certaine presse, qui se prétend catholique et qui n'est que violement, éperdûment, anti-républicaine, que remonte la responsabilité. On crut habile dans ces milieux d'organiser la guerre à outrance contre l'école, on l'attaqua d'abord au parlement, ce qui était légitime; mais, comme ces efforts furent sans résultat, après la lutte contre les projets de loi, on essaya d'empêcher l'application des lois; enfin on passa à la lutte contre les personnes:

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dans certains villages les instituteurs furent boycottés, de venimeuses campagnes de presse ourdies contre les institutrices. Il y eut des contrées où l'institutrice n'arrivait pas à trouver un boulanger qui consentît à lui vendre du pain; d'autres, en arrivant prendre possession de leur poste, voyaient le seuil de l'école obstrué d'immondices. Plus ces malheureuses étaient pieuses, exactes à remplir tous leurs devoirs religieux, plus la guerre contre elles était impitoyable, car elles risquaient de faire crouler toute l'argumentation cléricale et de prouver aux plus obtus que le gouvernement ne propageait pas l'anti-religion d'Etat. On ne saurait s'imaginer les moyens par lesquels on essaya alors d'intimider, d'affoler, de salir des jeunes filles sans défense, perdues au milieu d'une population fanatisée. Et tout cela était fait à l'instigation de meneurs, qui se proclamaient les défenseurs de l'Eglise, les champions de Dieu!

On conçoit les blessures profondes faites par de tels actes. Si, aujourd'hui que l'école laïque est victorieuse, il y a çà et là des actes de représailles, nous avons le devoir de les déplorer, et de tout faire pour les empêcher. Mais on ne doit pas les juger, sans tenir compte de ce qui précède. Ceux qui parlaient au nom de l'Eglise Romaine propagèrent alors de détestables mœurs politiques. Ils échouèrent, mais on les combat quelquefois avec les tristes armes dont ils avaient enseigné l'usage. Puisse du moins cette leçon leur servir!

Il y avait sans doute dans l'Eglise beaucoup d'esprits droits et clairvoyants qui condamnaient ces procédés, mais leur voix n'arrivait pas à dominer le tumulte de l'hétéroclite armée qui se jetait à l'assaut du pouvoir, unie sur un seul point, la haine des institutions nouvelles que la France s'était données. Cette armée avait déclaré la guerre, sans même songer à la possibilité d'un insuccès; sans se rendre compte qu'en cas d'échec, la défaite de ceux qui, sans pudeur et sans prudence, se donnaient pour les soldats de Dieu, devrait paraître la défaite de Dieu lui-même.

D'ailleurs, les adversaires de l'école laïque, en escomptant la victoire, n'étaient pas complètement fous. Certains succès étaient de nature à les enhardir. Ils étaient déjà arrivés à conquérir une influence prépondérante dans certaines grandes écoles qui sont comme la pépinière intellectuelle et administrative du pays. Dans l'armée, dans la magistrature, dans la haute industrie, ils avaient habilement crée des courants où il était de bon ton de dénigrer

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la démocratie, de s'organiser pour le jour où on aurait renversé la République.

De plus, vers 1890, une partie de la bourgeoisie française était désemparée, hésitante; elle ne comprenait guère que le gouvernement pût avoir d'autre préoccupation que celle de maintenir l'ordre et de lui donner les moyens de jouir tranquillement.

Mais le peuple veillait. En face de ceux qui prêchaient la réaction, comme en face de ceux qui réclamaient un arrêt, lui, sentait, confus et impérieux, le besoin de poursuivre la marche en avant. Et comme alors le paysan et l'ouvrier trouvèrent, presque partout, dans la personne de l'instituteur un confident sympathique et un ami, le prestige et l'autorité morale du maître d'école s'affirma de plus en plus. Naturellement le paysan qui prenait plus souvent le chemin conduisant chez le maître d'école, oubliait peu à peu celui de la cure ou du château.

Si je me suis bien expliqué le lecteur doit comprendre combien l'école laïque française est quelque chose de complexe et d'original. Il y a des règlements qui en déterminent le caractère officiel; mais ni ces définitions, ni celles que nous pourrions formuler, ne sauraient donner une idée vraie de ce qu'elle est, si on perd de vue les circonstances dans lesquelles elle est née, sur lesquelles elle s'est façonnée. Ses amis, aussi bien que ses adversaires, commettent souvent l'erreur de vouloir trop préciser: on ne dissèque pas un corps vivant; on ne peut pas définir complètement une institution d'un caractère nouveau, création de tout un peuple, formée à son image et à sa ressemblance, où il prend conscience de lui-même et dans laquelle il tâche de se surpasser lui-même.

L'école laïque française a déjà évolué beaucoup, elle continuera; elle doit continuer. Elle est maintenant victorieuse de ses ennemis du dehors, et désormais ses efforts peuvent tendre à se fortifier et à comprendre toujours avec plus de délicatesse ce que le pays attend d'elle.

L'examen du programme scolaire ne donne pas plus l'idée de nos écoles qu'un schéma kilométrique de la voie ferrée ne nous ferait soupçonner ce que peut être un voyage en Palestine. C'est l'âme qu'on met dans ces formes qui importe. L'instituteur devient de plus en plus un éducateur. On l'accuse de se substituer peu à peu au curé, au pasteur, et au rabbin. Mais est-ce sa faute, si le peuple attend chaque jour de lui un secours intellectuel et

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moral plus énergique? Est-ce sa faute, si les quatre cinquièmes des Français aujourd'hui se sont détachés de toute église, non par incrédulité, mais par foi, non par manque d'idéal, mais parce que l'idéal que leur offrait leur église leur paraît puéril, n'a pas de prise sur leur cœur et leur conscience?

Les plaintes trop vives du clergé ne sont-elles pas un aveu de faiblesse . . . d'incrédulité, puisque le prêtre a à son service tous les moyens d'action de l'instituteur et beaucoup d'autres en plus? N'a-t-il pas par la tradition, le célibat, les cérémonies, un prestige incomparable? N'a-t-il pas les sacrements, ces sources divines où il peut puiser pour lui et ses catéchumènes une force ineffable? Au fidèle ayant la foi, la foi robuste et sincère, la guerre du prêtre contre l'instituteur devrait apparaître comme un non sens et une lâcheté.

Les adversaires de l'école laïque disent: "Le rôle de l'instituteur est très différent de celui du prêtre. Les organisateurs de l'enseignement laïque avaient solennellement déclaré que le terme de laïque était synonyme de *neutre entre les diverses dénominations religieuses* et de *non-confessionnel.*" C'est parfaitement exact. Et on peut dire qu'avec une réelle bonne volonté, notre enseignement primaire s'est efforcé de ne pas empiéter sur le terrain religieux; mais, très vite, la masse des enfants, vivant en dehors de toute formation religieuse, a été amenée à attendre du maître la nourriture spirituelle qui ne lui était pas fournie ailleurs.

S'imagine-t-on que l'instituteur puisse leur répondre: "Je n'ai pas qualité pour vous apprendre autre chose qu'à lire, écrire et compter?"

L'instituteur français a été ainsi amené, malgré lui, il faut le répéter, à avoir un rôle de direction idéale qu'il n'a dans aucun autre pays.

Y réussit-il parfaitement?

La perfection n'est pas de ce monde. En tout cas il siérait à l'Eglise Romaine de ne pas se montrer trop sévère et de penser, quand elle veut juger, aux résultats qu'elle obtient dans les pays où elle est maîtresse absolue de l'enseignement.

En quarante ans, l'école laïque a conquis sur notre pays une influence incomparablement plus profonde que celle du clergé, du gouvernement ou de la presse; c'est elle qui peu à peu tend à

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constituer une opinion publique réelle, réfléchie et qui ne se laisse émouvoir ni par les troubles nerveux d'une capitale comme Paris, ni par les coups de tête d'un gouvernement.

Là est la force de l'école laïque, ce qui fait que ses bâtiments fleuris, ouverts, aérés, ne sont dans nos plus petits hameaux qu'un symbole bien imparfait de l'empire qu'elle a pris sur l'âme française. Sans fracas, presque sans s'en apercevoir, elle crée une mentalité nouvelle.

Qui ne voit, par exemple, que c'est à elle qu'est due la stabilité politique du pays, alors qu'au XIX siècle aucun des gouvernements n'avait pu vivre plus de vingt ans?

Mais il y a une question plus intime et plus troublante encore pour laquelle l'école laïque nous a montré la voie à suivre. Je veux parler de la question d'Alsace. Depuis quarante ans, la France a dû céder une partie de son territoire; et, après ce long espace de temps, les deux provinces annexées à l'Empire allemand protestent avec autant de fermeté que le premier jour contre la violence qui leur a éte faite. La France, elle non plus, n'a pas oublié; elle attend. Elle n'attend pas l'occasion de se venger de l'Allemagne. La revanche n'est pas populaire du tout. On ne veut pas céder aux mouvements irréfléchis; et ce n'est pas par peur d'une guerre dont l'issue serait aléatoire, c'est parce qu'on sent le devoir de préparer l'avènement d'un nouveau droit des gens. Si quelque miracle pouvait nous rendre les provinces perdues, écraser l'Allemagne, sans qu'une goutée de sang français fût versé, nous n'en voudrions pas, parce que, ce que nous voulons, c'est que les conflits internationaux en arrivent à se solutionner par des voies nouvelles; c'est que, si la liberté de l'Alsace nous tient à cœur, la dignité de l'Allemagne ne nous est pas indifférente; nous voulons serrer sa main dans notre main, loyalement et sans arrière-pensée.

Il y a tout un département de l'activité humaine pour lequel l'école laïque s'achemine vers des horizons encore plus nouveaux: cléricalisme et anti-cléricalisme, religion et anti-religion, foi et incrédulité, soumission au dogme et rationalisme absolu paraissent à beaucoup d'hommes comme deux camps absolument séparés. Et presque tout le monde croit que l'école laïque organise avec une sorte de frénésie le camp de l'anti-cléricalisme.

L'erreur est excusable, puisque l'Eglise avait déclaré la guerre

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à l'école, et que si l'école en masse n'a jamais accepté ce défi, il y a eu cependant des cas où elle a rendu coup de dent pour coup de griffe.

Plus souvent, pourtant, l'école a cherché une *via media,* où on agissait selon l'occasion, l'opportunité, les directions des chefs, sans norme et sans esprit de suite.

Je ne crois pas me tromper en espérant que l'école est en train de tracer une voie nouvelle qui n'est ni avec le cléricalisme, ni avec l'anti-cléricalisme, ni même à égale distance de ces deux extrêmes. Je veux parler de la voie scientifique. Un exemple concret fera comprendre ma pensée.

Voici la Bible. Pour l'Eglise, elle est la révélation; pour les adversaires de l'Eglise, c'est un recueil sans relation avec la vie moderne et dans beaucoup de ses parties d'une valeur morale très discutable. L'homme du juste milieu vient et déclare qu'il est bien simple de faire une anthologie des beaux morceaux de la Bible et de laisser tomber le reste.

Or l'école paraît s'orienter vers une solution toute différente. Elle remettra la Bible à sa *place dans l'histoire de la pensée humaine.* Aussitôt celle-ci redeviendra un livre vivant, celui dans lequel notre civilisation a pendant de longs siècles inscrit les étapes de son pélerinage vers l'idéal.

La Bible sera ainsi reconquise. Et ceux qui auront compris cet enseignement seront à tout jamais préservés de l'idolâtrie de certains croyants, adorant le livre comme une sorte de talisman, et de l'insupportable suffisance de certains pontifes du rationalisme, incapables de rien comprendre au mystérieux travail de la nature, au sentiment, à la vie.

C'est ainsi que l'histoire scientifique débarrassera l'école des métaphysiques et des anti-métaphysiques. Formuler *la* vraie religion restera l'affaire des églises; la sienne sera d'étudier *les* religions, de les montrer comme les pages les plus tragiques de l'ascension de l'humanité vers la vérité et vers la liberté. En apprenant à s'intéresser aux pensées, aux progrès de civilisations dont nous sommes séparés par de longs siècles, nos écoliers apprendront à respecter et à aimer ceux qui sont le plus loin de nous. En voyant la lenteur et les souffrances à travers lesquelles l'humanité a fait quelques-unes de ses conquêtes les plus élémentaires, ils apprendront la loi du travail, et trouveront même des indications utiles pour devenir à leur tour les collaborateurs

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de l'œuvre qu'ils n'ont pas inaugurée, qu'ils n'achèveront pas, mais à laquelle ils peuvent concourir efficacement.*

Sans doute l'histoire des religions ne peut pas s'enseigner en détail à l'école primaire, mais quand les maîtres, dans les écoles normales, auront pris une idée générale, un peu exacte, du long labeur de l'humanité, tout leur enseignement profitera de cette vue si conforme à la réalité et pourtant si élevée et si généreuse.†

Quelques personnes trouveront peut-être que les vues de cet article ne s'accordent guère avec certains faits dont on a fait grand bruit à l'étranger. On a beaucoup parlé, par exemple, de certains manuels scolaires, où, dans des morceaux choisis, le nom de Dieu avait été éliminé et remplacé souvent d'une façon burlesque.

Le fait est matériellement exact. Il n'est pourtant pas vrai. Voici comment. En France, chacun peut faire imprimer un ouvrage qu'il intitulera, si cela lui plaît, "Manuel de morale scolaire." Dans les articles où il était question de ces manuels, on suggérait au lecteur l'idée qu'ils étaient d'un usage courant et pour ainsi dire normal. Or la vérité, c'est qu'ils n'ont pas eu le moindre succès.

Quelques excentricités maladives et isolées ne sauraient compromettre l'école. Un fait qui montre bien que ce n'est pas un esprit d'anti-religion vulgaire qu'on propage dans nos écoles c'est qu'un des journaux les plus répandus parmi les instituteurs, "Le Manuel général de l'Instruction publique," dirigé par F.

* Ces vues sont celles qui inspirent toute la politique de M. Briand. Sa sérénité, sa courtoisie à l'égard du parti clérical ont fait croire à quelques personnes qu'il donnait un coup de barre à droite. C'est bien mal comprendre la situation. Un gouvernement, qui a derrière lui toutes les énergies vitales du pays, se grandit encore en se montrant impassible ou magnanime devant une minorité aux abois. On a souvent dépeint on Amérique M. Briand comme un persécuteur. Il vient pourtant de donner une nouvelle preuve de son parfait libéralisme. *L'Encyclique Editæ sæpe* que le S. Siège n'a pas pu publier en Allemagne, l'a été, en France, sans la moindre difficulté.

Pour en revenir à l'école laïque et à l'idée que s'en font les partis les plus avancés on devrait bien lire, en particulier, le beau discours du leader du parti socialiste, Jean Jaurès, à la Chambre des Députés (21 et 24 Janvier, 1910).

Il a été publié en tirage à part sous le titre *Pour la laïque* à la librairie de l'Humanité, 16 rue du Croissant, Paris (0.10 cent. l'exemplaire).

† Pour avoir l'idée claire de l'esprit dans lequel commence à s'orienter la question de l'enseignement de l'histoire des religions, voir les articles de M. Loisy dans la Correspondance mensuelle de l'Union pour la Vérité (1909-1910) 21 rue Visconti, Paris.

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Buisson—un des fondateurs et l'organisateur infatigable de l'école laïque en France—a pour rédacteur de la partie morale, Charles Wagner, l'ami de M. Roosevelt, bien connu en Amérique et en Europe comme un des plus vaillants champions du progrès de la vie religieuse.

L'autre publication pédagogique la plus importante est intitulée *Le Volume:* elle est dirigée par Jules Payot, le célèbre auteur de "l'Education de la volonté" et de tant d'autres œuvres qui ont mis son nom au premier rang des moralistes contemporains.* Représenter de tels hommes comme d'impudents et haïssables sectaires n'est possible que devant des auditoires incapables de vérifier. La presse catholique mène pourtant des campagnes de ce genre, sans s'apercevoir qu'elle disqualifie la cause qu'elle croit servir.

Ces cabales n'ont pas le moindre résultat. L'œuvre de laïcisation est irrésistible, parce qu'elle n'est pas l'œuvre d'un groupe ou d'un parti. Les Jules Ferry, les Pécaut, les Steeg et ceux que je viens de nommer, sont, ou ont été, les interprètes de la conscience du pays. Leur œuvre n'a rien de factice, elle est la conséquence directe du progrès intellectuel et moral de la démocratie. Les coalitions en apparence les plus fortes ne pourront pas plus la renverser qu'elles n'ont pu arrêter la marche victorieuse des conquêtes de 1789. *Portæ inferi non prævalebunt.*

* Jules Payot est depuis quelques années l'homme le plus attaqué de France par la presse cléricale. En agissant ainsi, celle-ci n'a pas manqué de clairvoyance, et le spectacle serait beau, si ceux qui prétendent représenter Dieu étaient des lutteurs sérieux. Malheureusement, ce n'est souvent pas le cas. Les collaborateurs de la "*Correspondance de Rome*," périodique qui s'est chargé de styler l'opinion cléricale dans le monde entier, ont des procédés de polémique qui ne font de mal qu'à celui qui les emploie. La seule manière de connaître les vues de Jules Payot sur le rôle de l'école primaire, c'est de lire son "*Cours de Morale*" où il les a exposées de la façon la plus claire. Paris, in 12, 1904.

PAUL SABATIER.

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# THE MISSION OF RICHARD WAGNER.

BY JOSEPH SOHN.

"THE world globes itself in a drop of dew . . . so do we put our life into every act." This statement of Emerson is peculiarly applicable to men of genius. Our best poets and musicians have left the indelible impress of their personality upon every line that they penned; and the greater the personality, the more simple the attributes revealed. Indeed, as we approach the mountain peaks of art,—the giants that tower above the centuries,—we shall find that each stands as the embodiment of one extraordinary power—one central idea in which all other faculties focus; and with this idea the artist's mission is intimately associated.

Our foremost leaders in the domain of art have all been intrusted with such a mission; and the mistake hitherto frequently made has been either to overlook this entirely or oftener to extract it from some particular doctrine or isolated work. This mode of procedure has been applied also to Wagner; and the absence of criticism based on close psychological analysis is here still painfully evident. No man, it is true, has more clearly enunciated his own theories. But the very vastness and complexity of the structure that Wagner has created, necessitates the establishment of an inward organic sequence and development; and it is the failure to grasp this, "*den inneren Faden,*" as the Germans designate it, that has led to a multitude of conflicting opinions, a few of which it may be well here to review.

Some time ago I listened to the following very characteristic discussion as to the merits of the Wagnerian drama; said *A:* "Wagner is to me nothing but a continuous crash, bang! I cannot conceive how any one can call so loud and discordant a performance 'music'!" *B* (a musician): "But you thoroughly enjoyed the performance of 'Lohengrin' which we attended."



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*A:* "Several of the 'airs' were very beautiful, but the meaningless recitative between them was insufferably tedious." *B:* "Well, Wagner's music is not easily understood. It is very deep and must be heard often to be appreciated." *C:* "As for myself, I regard Wagner as the Shakespeare of the nineteenth century; *some of his scenes, however, might well be curtailed, as they extend the performances to an unnecessary degree.*"

All these strictures apply to the interpreters of Wagner, but not to himself; and it is to the same source that we must trace that widespread misconception, according to which the great composer is pictured as something colossal, titanic and ponderous—as a sort of Bismarck of music, capable of wielding and manipulating great masses of tone. Nothing could be further from the truth than this conception; for the rich expressional material that Wagner has employed is but the efflorescence of an exquisitely delicate and sensitive nature. It is not my purpose here to show how these peculiar views originated; suffice it to say that they are thoroughly erroneous. Not less so is the idea that Wagner was primarily a poet. On the contrary, his was the most distinctively musical organization on record—*i. e.,* if we apply the composer's own definition of the musical element as the direct expression or efflux of the emotional nature. Here lies the key to the proper comprehension of Wagner's life and mission. Although in view of his stupendous achievement the statement may appear somewhat paradoxical, Wagner was not *primarily* a poet compelled to draw upon external life for his material, but a vibrant instrument in the mighty hand of Nature, destined through suffering to sound the depths of the human heart and to reveal its possibilities.

Richard Wagner was the embodiment of the emotional nature in its perfect purity and infinite intensity. The emotional nature of man, *per se (das menschliche Gemueth),* is the most delicately perfect organization of which we have knowledge, constituting as it does the very kernel of our being, the invisible, delicate, yet most powerful bond of union between us. Here, above all, is the one element which may be called purely and distinctly human; for, while all communications by means of the intellect presuppose a knowledge of the external world, the manifestations of our emotional nature are innate and instinctively understood. To illustrate this let me ask, What is it that distinguishes the human

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body, so delicate and exposed, from every other organism? Is it not the possibility of intensest suffering and of intensest sympathy? And does not this element find its deepest and most direct expression in the human voice? Our very first manifestation when, laid bare to all impressions, we are ushered forth into the world, is the cry with which we announce our entry into the communion of man; and this cry is the distinctively human appeal for sympathy, which can find a response only in another breast.

In Richard Wagner these conditions were infinitely intensified; and it would seem as if Nature had kept all knowledge of the world from him in order to develop his deep inner life alone. Thus, from the beginning to the end of his career, where he introduces "Parsifal" to us,

"Through pity knowing, the artless one,"

Wagner was and remained a child. He was ever distinguished by purity, innocence, guilelessness and impulsiveness, the charming attributes of childhood; and it is this impulsiveness—the intense emotional fervor of his nature—combined with the other characteristics I have mentioned that gave direction to his genius.

At the beginning of Wagner's career we notice a complete absence of aim or purpose. One study, one pursuit after another, is taken up in fleet succession; and into each he throws himself with all the ardor of his being, to the point of complete self-surrender. Gradually, however, he is brought into closer contact with the arts, Shakespeare, Mozart and Beethoven being the powerful magnets that attract him; and their influence was to be permanent. For the communication between men of genius from century to century is instantaneous as the passage of the electric spark from continent to continent; the infinite here, despite dissimilarity of endowment, ever attracting the infinite. The influence of his predecessors, therefore, in the case of Wagner, manifested itself in accordance with his exuberant emotional nature. In the arts he beheld a wealth of expressional material; and this was employed by him according to the conditions of the time and in a purely superficial manner. A vast amount of material was to be used in the presentation of some drama modelled upon a scale of unparalleled magnificence—"the poetry of Shakespeare and the music of Beethoven were to be combined in it." Some of Wagner's earlier works are the wildest extrava-

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ganzas. It is but natural that such a nature should have been powerfully attracted by Italian grand opera; and "Rienzi" reveals Wagner in the full storm and stress of his early career.

He who has the gift to read between the lines should be able to trace even upon the first pages of Wagner's "Autobiography,"* in these short, hurried sentences and incredibly rapid transitions, the inevitable psychological reaction which was to take place within his nature. As a child, in the eager pursuit of a coveted object, will stray through many devious paths until at last it finds itself empty-handed and alone amid strangers, so Richard Wagner, in the ardor of his soul, had pursued all the phantoms of modern life until at last, completely disappointed and disheartened, he felt that he was a solitary wanderer upon the face of the earth.

SIEGMUND.

"Where'er I fared,
If for a friend
Or fair I wished,
I could not win what I asked for;
Ill luck lay on me.
When recking I was right,
Wrong to others I wrought;
And things ill, as I thought,
Others hotly upheld.
I fell in feud
Wherever I fared;
Strife came
Wherever I strayed;
Did I seek pleasure,
Pain but appeared;
They call me then 'woeful' rightly;
Unwitting, woe I must wreak."

*("Walküre," Act I, Corder's Translation.)*

The faculties requisite to modern society, calculation and reflection, were exactly the reverse of those which existed in the nature of Wagner. Imagine this man surrounded by the calm, conventional, case-hardened natures among which he was thrown and everywhere misunderstood and coldly rebuffed by them—in his intensely rapid career through modern life, meeting with disappointment after disappointment—is it astonishing that Wagner, at last completely disheartened, should have felt that society

* A brief autobiography, written early in life.

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had cast him out? It is useless, however, to condemn society for the trials it imposes on the individual. The conditions under which the nature of Wagner might have expanded simply did not exist. They were to come from the depths of his own soul, which was to be tried in the crucible of suffering. While many may have suffered greater actual hardships than he, I know of but few that have been exposed to such intense spiritual anguish. For degrees of suffering cannot be measured by external circumstances, but by the nature of those upon whom this suffering is inflicted. It is very characteristic of our age to judge men in the lump and to make the individual conform to the arbitrary standard thus created. This is an error. The same keen blast which will but stimulate a powerfully resistant nature will chill a human being just as perfectly but more delicately organized to the marrow. It is upon this psychological basis that we must follow the second period of Wagner's career.

With slender means, friendless and despairing, Wagner sailed for England inspired by a faint hope of bettering his condition. Tossed and buffeted about for weeks, shipwrecked on the coast of Norway, and again subjected to the mercy of wind and wave, he finally despaired of ever reaching shore. While thus brooding over his fate, the spectre-like figure of ancient tradition became invested with a fearful reality. Like Vanderdecken, Wagner felt that he, too, was doomed to roam forever upon the ocean of life; and as to the Flying Dutchman, so to Wagner, yearning for peace and rest, there appeared far upon the edge of an apparently endless horizon a gleam of hope; and in that distant sunrise he beheld the radiant figure of Senta with arm outstretched to lift his doom. Faintly from far across the deep arose beckoning strains of sweetest music, the welcome of that loving heart that would save him from perdition.

This opera, "The Flying Dutchman," with which Wagner enters upon the second period of his career, has a deep significance. We must pass with Dante through Hell and Purgatory before we can behold Beatrice, an angel in Paradise. Goethe, in his "Faust," reveals the sum of his manifold experiences; yet it is in woman that he at last finds the guardian angel of man, and to him also she appears as a celestial vision. In "The Flying Dutchman," Wagner has transported her from the clouds. She becomes a palpable reality, the actor in a great human drama, in which

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the actual life of the author himself is depicted. It is true that the early folk-lore furnished the material and the inspiration for this drama. Yet these legends and traditions of the folk, which had been handed down through the ages, had become mere phantoms. It was Wagner, in his infinite desire for a closer communion of the heart, who filled and reanimated the extremely slender materials which he found with the breath of life.

The tragic element in the nature of Wagner lay in the fact that he was swayed entirely by the irresistible impulse of his intensely emotional nature. From this point of view we can understand the velocity with which he was hurled from one extreme to another: from the fearful spiritual suffering, the utter isolation, darkness and despair, depicted in "The Flying Dutchman," to the Bacchanalian revel with which "Tannhäuser" opens. A wild longing takes possession of the wanderer who had so long been condemned to roam alone and forsaken amid darkness and tempest—a longing to forget the past, to flee from it as from a fearful dream and to plunge once more into the fulness of life. We can almost hear his frenzied cry, "Back, back to life's glowing hearth and to the warm embrace of love!" In the "Tannhäuser" we behold Wagner seeking that material enjoyment of life which has ever been the dream of youth. He enters into it with all the intensity, yet with all the purity of his being. For it is not sensual pleasure alone that he seeks, but that alluring vision which we believe tangible, yet which ever flees from us as we pursue it. Never before has the fundamental conflict to which every undegenerate human soul is subjected been described as in this opera.

In the National Gallery at Berlin there is a masterpiece of art. A youth, mounted upon a steed in mad career, is pursuing a fleeing vision, a female form of ravishing beauty. Before him is an abyss bridged by a single fragile plank; at his elbow, guiding the bridle, is Death's grinning image. But the youth neither sees nor hears in the madness of his pursuit. Convert this picture into sound and you have an approximate idea of the Bacchanale of the "Tannhäuser," indescribable in words—a wild dream, an intoxication of the senses, the Inferno of the passions. It is with a cry of despair that Tannhäuser at last awakens out of the night that threatens to engulf him: "Ah, that I might once more behold the blessed light of day! that I might find peace,

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though it were in death!" We know the rest, and that the fearful conflict between the irresistible fascination of the senses and the desire for redemption was stilled at last by that divine agency, the noble love of a pure and unselfish woman.

And now it is directly in the heart of woman that Wagner, in his infinite longing to find an abiding-place upon the ocean of life, seeks his ideal. That sense of isolation which characterizes "The Flying Dutchman" becomes greatly intensified upon the completion of "Tannhäuser." It was caused partly by the psychological struggle through which Wagner had passed in the latter opera, but was in a still higher degree the result of concomitant external circumstances. Wagner himself tells us that with "Tannhäuser" he had signed his death-warrant so far as the true recognition of his personality by modern society was concerned.* Thus completely isolated, Wagner realizes his affinity to Lohengrin.

Lohengrin, by reason of his lofty station elevated far above his fellow men, is yet alone, for his heart is barren of love—a truth how wide in its significance! The exalted knight, a vision almost celestial, descends out of the infinite, out of the clouds, from the land of nowhere, to mingle with mankind in order that he may find his salvation in the heart of the woman who will love him for his own sake alone. He conceals his name, his lineage, his rank, in order that the longing of his soul may be fulfilled. *But the human heart desires the fullest confidence of the beloved object, that heart which Lohengrin so earnestly seeks, but which he does not comprehend.* Thus, at last, the spell is broken when Elsa, in the fulness of her love, implores Lohengrin to break the one barrier between them.

It is in "Tristan and Isolde," the greatest drama of love ever written, that Wagner reaches the climax of his longing. In "Lohengrin" it is the heroine who is completely unselfish. It is she who sacrifices all, who, in the intensity of her human passion, seeks to break through the reserve that Lohengrin so jealously guards. Name and fame, earthly power and glory, even death, are as nothing to the love she cherishes for the object of her affection, whom she wishes to possess wholly. In "Tristan and Isolde" the complete surrender of two human souls to the love-passion is at last realized, and the tragic element lies in the

* Wagner: "*Eine Mittheilung an meine Freunde.*"

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greatness of the sacrifice. Never did a more glorious possession sink away so suddenly before the irresistible spirit of love. Tristan and Isolde are willing to renounce all but honor; and realizing that their condition is insupportable, they seek to put an end to their lives. But love is triumphant over death. They must live and suffer to the last, until consumed, as it were, by their very passion they sink into the night together united in an everlasting embrace. Having traced the development of Wagner through the second period* of his career, I shall now endeavor to point out the deeper significance of the work accomplished.

The word "sympathy," in its widest significance, denotes "*Mitgefuehl,*" a fellow feeling, and is inseparable from the idea of fellowship or fraternity. It is, therefore, in its very essence completely unselfish. It is not this principle, enunciated by the Founder of Christianity, but that of suffering, evolved amid conditions when the actual destruction of the world itself was considered imminent, which has ever been accentuated by the Church. The element of sympathy was relegated to a region beyond the clouds; and men could but long for that which practically did not exist on earth. With the consciousness of a sympathetic bond of union or fraternity, we at once joyously enter as individuals into that which is universal; suffering without sympathy, on the other hand, becomes self-centred. It desires all, and gives nothing; and the element of the "ego" enters into its loftiest aspirations. Within the nineteenth century, and, in a measure, at the close of the eighteenth, this longing at last degenerated into a contemptible, petty, self-bewailing spirit, disgusting us by its impotence and justly subjected to ridicule. This spirit may be said more particularly to lie at the basis of that class of the literature referred to in which the emotions and the social relations play a leading part. "Woman" is the primal moving agent of all this bric-à-brac, yet what pitiful inward beggars are her devotees. Centuries ago, however, this spirit of yearning had a loftier signification; for then it was the expression of a need felt by the entire community, and individuals, otherwise most powerful and heroic, were subject to its influence. During this period it is woman, although entirely *spiritualized,* who becomes the intercessor in Heaven; and with the greatest poets, from Dante to

* I believe the first period should terminate with "Rienzi," the second with "Tristan," and the third and last with "Parsifal."

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Goethe within the past century, it is the divinely feminine heart that pleads for the salvation of man. An eternal truth lies at the basis of this sentiment. For not only the soul of genius, but the ancient spirit of the folk instinctively recognizes woman in the highest type as completely unselfish; and thus she stands as the highest symbol of human *society*. To the early Christian communities she so remained; and even when the soul of man had become homeless on earth, it still fondly clung to the heart of woman as emblematic of the deepest human associations. Wagner, throughout the entire second period of his career, unconsciously sought human society under natural conditions. We have seen how, guided by the innate impulses of his being, he at first seeks the ideal woman—*i. e.*, the *symbol* of this society. This he finds among the early Christian communities and here his own psychological condition finds support.

"The Flying Dutchman," "Tannhäuser," "Lohengrin" and "Tristan" are, therefore, the great *trials* to which Wagner was subjected. In these he had sounded the depths of the human heart. He was as one who, completely isolated, sinks ever deeper into the shadow of night and death, and in the extremity of his need cries out into the boundless void for sympathy. This cry becomes ever more tragic in its significance, while the answer to it is ever as the voice of the Magdalene, soothing and comforting; until at last to the question of Tristan (Act II), it is as if we heard the words: "Ay! Even into the shadow of death, my beloved, will I follow thee!" and here the spirit of longing is stilled forever in death—*the death of self*. Such is the sublime signification of the earlier dramas; and he who regards them merely as beautiful operas, unconscious of the fact that they constitute the Passion of *the most profoundly human of all poets*, will be incapable of grasping their inner psychological sequence and their bearing upon the revelation that Wagner was now destined to receive.

Wagner never obtained a full dramatic realization of his immediate psychological condition until he had discovered a historic analogy. Each of his dramas owes its inception to such a discovery; and however meagre the material, it kindled into life at his touch. This ceaseless search or exploration for the environment befitting his condition is an idea underlying all the work of the man whom in "The Flying Dutchman" we behold as the

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Ahasuerus of the sea, in "Tannhäuser" as a pilgrim, and in "Lohengrin" as a stranger. I have hitherto detailed in their proper sequence Wagner's psychological experiences only. Broadly viewed, however, they are the successive stages of his career—the career of a solitary wanderer who penetrates ever farther into the dim background of time; and we must hold fast this truth to realize that upon the completion of "Tristan," Wagner's actual position very closely approximated that of the explorer who, completely exhausted, despairingly succumbs at last to his unremitting search, sinks into insensibility and oblivion, but on awakening finds that, unconsciously to himself, the goal has been reached. Although, perhaps, a slight digression, the following paragraph will prepare the reader more fully to appreciate the vast scope of Wagner's achievement in the "Trilogy":

*"Wo der gelehrte Arzt kein Mittel mehr weiss, de wenden wir uns endlich verzweifelnd wieder an—die Natur."*—WAGNER: *"Die Kunst und die Revolution."*

We know that after a long period of bodily or spiritual suffering the senses become preternaturally vivid and susceptible to outward influence and impression. The various exemplifications of this marvellous compensation of nature may be traced from the healthful passivity of the patient who has successfully passed the crisis to the state of clairvoyance distinguishing the prophet whose spirit, broken by incessant trials, has thereby been prepared to receive a revelation. All the great founders of our religions, Buddha, Moses, Jesus and Mahomet, have thus received their mission in the solitude or the wilderness; and the same psychological phenomenon is repeated in the experience of Richard Wagner and in a no less exalted sense: for the Nibelungen saga, the deep import of which Wagner was now destined to reveal, is also a "Book of Genesis"—the Genesis of that Germanic race which is revolutionizing the world.

A great revelation probably comes first as a sudden gleam, gradually broadening into the refulgence of day; and the complex psychological phenomena which immediately led to the conception of the "Trilogy" may perhaps very approximately, if not accurately, be expressed by extending the before-mentioned simile. In "Tristan and Isolde" the power of suffering and of longing alike are broken; the idea of self is annihilated; and the wanderer, on awakening from insensibility and oblivion, hears about

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him the deep voice of Nature, which to him seems to come from the infinite depths of existence. It is the first gleam of a revelation; and to Wagner, who here experiences a veritable rebirth at the hands of Nature, the great fabric of the Nibelungen saga, which pictures the genesis of *all* creation, now becomes invested with the reality of dramatic conviction. Nature had whispered to him her secret, and with the same emotional intensity with which he had before endeavored to give expression to his *own* suffering he now endeavors to portray the primal unfolding of the deepest and most fundamental passions of the human breast in the "Trilogy."

In the ancient northern saga, that open "Book of Genesis" of the Germanic race, all nature is figured as a tree of gigantic proportions whose roots are deeply imbedded in the heart of the world, whose mighty trunk soars aloft, piercing the clouds, whose innumerable branches constantly spread and extend in every direction, covering the universe. "The rustle of it is the Noise of Existence, onwards as of old! It grows there, the breath of human Passion rustling through it; or stormtossed, the storm-wind howling through it like the voice of all the gods."* It is the victorious growth and expansion of the tree of life as it sprouts forth from the very *root* of being that Wagner now reveals.

If we hold fast this fundamental symbol of the northern saga, we may trace the rise of Wagner's elemental drama of existence from root to crown. The application of the special points of analogy as bearing upon the "Trilogy" must be left to the reader; what is of immediate importance here is to point out the fundamental signification of the great master's achievement which, in its scope, was (1) primary, elemental, and (2) perennial.

### PRIMARY.

In the "Nibelungen Trilogy" we behold the germination, the budding and, ultimately, the growth and expansion of the whole tree of life in accordance with natural laws. Primeval creation arises before us in rugged grandeur. We become conscious of the sway of elementary forces, and finally youthful man steps upon the scene. We behold the human race as it springs from the very fountain-head of being, in glorious communion with Nature, freely developing under her mighty influence and stimulated by

* Thomas Carlyle: "Heroes and Hero Worship."

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her to deeds by which the very tree of life itself is shaken to its basis; these deeds centring in the eternal conflict between love and ambition, between the fascination of woman and world dominion—in the *ultima ratio* of all human endeavor.

### PERENNIAL.

All this is elemental, and with adequate representation should appeal to us with the power of a revelation. But the tree of life is also perennial. Its most glorious flowering is the human race, whose free and spontaneous activity in its highest form should ever *anew* inspire to artistic representation. Such are the faint outlines of the vast fabric that Wagner has reared—a fabric so thoroughly grounded in nature that I have hitherto thought it advisable to hold fast that fundamental symbol which must here ever constitute our surest guide.

The efforts toward a re-establishment of a rational relation between nature and man may be said to date from the period of the Renaissance. Not until the advent of Rousseau, however, did the social element become strongly accentuated; and it is more particularly within our own day that to the question of physical human needs (now pressing for solution) there have been superadded those bearing upon the deeper relations of the individual to society. It was reserved for Richard Wagner to elucidate the *crowning phase* of this evolution of centuries by establishing the sacred relation between the human individual of the *highest type,* the *Poet Priest* or *Kuenstler* and the *Society of the Future* (1), enunciating as the *Religion of the Future* (2), the voluntary and free representation of the eternal *Drama* of human existence (3).

### THE DRAMA.

To revert to my fundamental symbol, "The tree of life reaches its most perfect flowering in the human race whose free and spontaneous activity *in its highest form* should ever anew inspire to artistic representation." Now, this highest form of activity, or, to put it somewhat differently,—for at present activity cannot be dissociated from purpose in the narrower sense,—society attains its most perfect bloom in the human being whose excess of individual life stamps him as hyperhuman *(uebermenschlich).* He is the hero of the race; and his life, its budding, flowering

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and decay becomes the subject of dramatic representation. Here, then, we have hero-worship in the most exalted sense. The individual is all in all. He sets the standard and becomes the centre of the play of life to be enacted (*des freien Lebenspiels,* as it may be called). He, broadly speaking, strikes the leading *motif* from which all others are gradually evolved; it is about him and his deeds that the other characters are grouped; and it is he that invites the obstacles that, as in the case of "Siegfried," *der freie Held,* may be freely opposed, or, as in "Parsifal," successfully resisted.

Now, as to the hero's ideal of life. With the society of the future, according to Wagner, life will have no ulterior aim: it will be its own purpose. With the absence of every form of coercion and unnecessary want the individual will cheerfully perform that for which he is best adapted; and activity, free and unhampered, and relieved from the necessity of supplying immediate wants, will naturally become artistic. Hence, the more the idea of utility wanes, the greater the degree of leisure to which men will attain; and thus life will ultimately become what it is intended to be—play. The foremost actor, however, in this play of life is man himself—free, strong and beautiful—not an artificial, but a natural product; and it is in his deeds that the interest of the community will pinnacle. These deeds will no longer, as in our own day, be directed toward the acquisition of objects of material tenure. Under the stimulus of an environment such as I have mentioned, men will be free to pursue *ideal* ends, as symbolized, for example, in "Siegfried" by the winning of the ring, the token of world dominion through self-sufficient heroism, and in "Parsifal" by the redemption of the beautiful symbol of the Holy Grail.

The "Trilogy" and "Parsifal," apart from their classic beauty, can serve merely as the *prototypes* of this drama; and the artist cannot build upon these unless he also, according to his specific endowment, has experienced a psychological development which will enable him to grasp Wagner's *Lebensanschauung* (view of life) and find support in it. In this sense Wagner has hitherto had no followers, but a number of feeble imitators who have exploited the whole domain of the northern saga in order to write *kraftvolle Germanische musik* (genuine Germanic music). Several have misappropriated in a purely superficial and meaningless

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manner the mere technique of his instrumentation; while others —most pitiful of all—have endeavored to write in Wagner's style by imitating his melodic sequences and harmonic construction even to the chord of the ninth—all distinctive characteristics of the great master's intensely emotional nature and, therefore, entirely peculiar to himself. It becomes imperative, therefore, in a discussion of the drama of the future, to point out the distinction here between the specifically Wagnerian (individual) and the universal.

Of the psychology of the drama I have spoken in the preceding paragraphs, and in this sense the "Trilogy" and "Parsifal" can serve only as an inspiration; for the artist capable of constructing a music-drama upon correct psychological principles will undoubtedly arrange his *motifs* according to inward necessity. The immediate value of Wagner's dramatic prototypes, psychologically considered, is briefly this: Siegfried is "the childlike hero," Parsifal, "the guileless innocent." Both mirror the nature of Wagner and present the *nucleus* of a more natural type of man. As Froebel, a kindred spirit, bases the educational system of the future (so much being still unaccomplished here) upon the study of child-nature and expects from this a regeneration of society, Wagner, in "Siegfried" and "Parsifal" presents the childheart—the emblem of simple, pure and innocent manhood, and says in effect: Whomever you may choose as the hero of your play, let his development be perfectly spontaneous and in accordance with natural laws.

Far more direct in its bearing upon the artist of the future is the vast fund of *expressional material* that Wagner has bequeathed to posterity. The combination of all the arts, the establishment of their interrelation, the analysis of the essential nature of each and all, and *their foundation in life*—here is a rich material endowment for the artist. Unfortunately, however, the difficulty here is the failure on the part of Wagner's interpreters, exponents, and so-called "followers" to perceive the foundation of this expressional material in life; and it is this circumstance chiefly that is responsible for our present wholly inadequate conception of the magnitude of Richard Wagner's achievement.

JOSEPH SOHN.

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# DIPLOMACY DE LUXE.

BY M. HONDA.

COLONEL ROOSEVELT was characterized by a Japanese Professor of International Law as "a great but dangerous person *fond of war.*" This gave the American press an occasion of commenting, favorably or otherwise, both upon the ex-President and the professor's country. The propounder of "Big-stickism" is so popular the world over that even to abuse him is a kind of tribute to his marvellous qualities. Nor was Dr. Terao the only Japanese professor to criticise Mr. Roosevelt's personality. Dr. Inouye, Professor of Philosophy in the Imperial University of Tokio, denounced his African hunting before the Humane Society of Japan. Certainly the animals slaughtered by the fierce American must have thought he was more than "dangerous and warlike." To kill, not from necessity, or for practical or scientific utility, but primarily as a pastime, and then to make proud trophies of the horns and hoofs of the poor victims —is this a pursuit worthy of a mighty peacemaker of the world and an acknowledged champion of Western civilization?

For all that has been said and will be said by his friends and foes, no one can deny that Mr. Roosevelt is the typical American, impersonating the aspirations, possibilities, tendencies and requirements of his country. It is as such and as an international politician that his sayings and doings concern us Japanese, more directly than as a Guildhall orator or big-game shooter. In so far as it affects the welfare of Japan and the Far East, it is our right, as well as our privilege, to measure the dimensions of his diplomacy.

When the school question and the labor problem seemed to threaten the traditional friendship between the United States and Japan, President Roosevelt tried to frighten the Californians

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into observing treaty obligations. He assumed the attitude of resorting to armed force, if necessary, to make the will of the Federal Government obeyed by a recalcitrant State. Upholders of the old doctrine of State autonomy must certainly have thought their Chief Executive a dangerous and warlike person, whereas Japan could not be sufficiently grateful to this mighty Daniel born again. In a later stage of this unfortunate situation he expressed his genuine fear of Japan's armed invasion to a member of another Government, with whom he sat in consultation over the Japanese immigration question. Just before starting for Africa, though no longer as President, he gave the world to understand that his country or any section of it had the sovereign right to exclude laborers of any nationality or race, and therefore should have brute force enough to enforce that right. This time it was Japan who began to doubt that Mr. Roosevelt was all peace and friendship. All the time, however, he was aiming at a more centralized government and bigger armaments, in which no other nation would fail to recognize true statesmanship. That nation, however, which was singled out as a means or an occasion to accomplish this end, whether in the name of doing justice to or in anticipation of an attack from that nation, could not help viewing this feat of diplomacy with a somewhat critical eye.

We are told that "even if the strenuous ex-President is fond of war, his martial ardor has in it much of the schoolboy's irresponsibility." "Roosevelt the fighter," says another critic, "rather than Roosevelt the peacemaker, is the man the people admire." Can we not safely say, then, that the fitful outbursts of hostile or martial severity, which characterize the representative American, also characterize the diplomatic conduct of his country; that occasional ungenerous and inconsiderate measure tend to destroy the good feeling produced by a broad, liberal, even altruistic attitude toward weaker nations? This style of diplomacy the present writer designates, for want of a better term, "diplomacy *de luxe*," in contradistinction to another kind of diplomacy such as that actuating Japan—the diplomacy of necessity. Of course it is an enviable distinction for a nation that it can afford to please or displease other peoples at will without incurring much risk to its own interests. But at the same time it is a cause for thankfulness that there are not many such truly *independent*, not *interdependent*, nations.

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In high, broad generalizations, perhaps, the foreign policy is guided by the true spirit of the whole nation at a given moment; but is this true in matters of practical detail? Perhaps the country is so big or the local interests so diverse that there cannot be any universally recognized standard or policy. Thus the alarmist or the agitator gets his opportunity, urging this measure and that as necessary to safeguard American interests and prestige abroad. This patriotic admonition, in its turn, cannot be free from some ulterior object or individual fanaticism. Still, there is always a need for awakening and stimulating the central authorities. And because the loudest is heard the best, there is a constant danger of mediocre or worse counsel prevailing. Thus the nation may wake one morning to find itself plunged into a newspaper war. This same need of spurring on the Government is largely responsible for that spasmodic indulgence in unmerited censure, now of England, now of Germany, now of Japan. This is possible only in a country where a peculiar combination of circumstances, moral and physical, makes its people feel sure that no outside Power can take serious offence with them without injuring itself, but that they can administer justice to the whole world whether the latter is willing or not to accept their authority. This attitude of the alarmists and agitators is that of the schoolboy from a wealthy but ill-regulated family.

Diplomacy *de luxe* has strength and advantages altogether of its own. No other kind of diplomacy can possibly aspire to these. Diplomacy of necessity, with all its sordid commonplace, pales before the spectacular brilliancy of logical and rhetorical flourishes. Moreover, in Japan, an inexperienced novice, diplomacy of necessity has evolved not much to show, far less to boast of. By way of commentary on diplomacy *de luxe,* however, let us briefly survey what Japan has been doing in her international relations since the reopening of the country in 1854.

Some sections of the Japanese had been gradually awakening to the absolute necessity of opening the door to Western intercourse, but they did not feel sufficiently prepared when Commodore Perry knocked so forcibly. Through the lack of resisting power, we were then obliged to try a new national career. Though unwillingly done, the deed seemed highly opportune as subsequent history has proved, and we all bless the memory of the man who forced us to do it. Peace and friendship with all nations



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became the national policy dictated by necessity for internal reorganization and development. Korea next claimed our attention as the standing bone of contention between China and Japan. To put Korea on the road to modern progress and to keep her intact as a buffer state between Japan and China became our settled policy. One great aim of the Chino-Japanese war was to make Korea a virtually independent nation. Then Russian influence was invoked both by China and Korea, and it became absolutely necessary for Japan to fight the northern Power for self-preservation. Thirty years' patient work on the part of Japan proved the futility of her efforts. Korea became a protectorate and was then annexed.

The triple intervention which wrested from Japan a substantial part of her victory over China rudely awoke us to a new necessity, the necessity for political friends over and above moral supporters. The Anglo-Japanese alliance was absolutely natural, as well as absolutely necessary, in view of the inevitable conflict with Russia. In the midst of Portsmouth Peace negotiations we began to notice early signs of a revulsion of feeling toward Japan. Both Europe and America looked with uneasiness and foreboding at the sudden rise in power of the hitherto negligible nation. To assure and reassure the whole world of her peaceful intentions and of her necessity for friendly intercourse with all nations, Japan entered into a series of agreements and conventions to safeguard the *status quo* in the Far East. Though not uniformly successful in the attempt, she has never swerved from the decision of making friends even of her erstwhile antagonists, China and Russia. With regard to the United States, special pains are being taken to keep unassailed the traditional and unbroken friendship of a half-century, in spite of, or rather, on account of a little cloud of unpleasantness which has appeared recently on the clear horizon of American-Japanese relations. Whatever construction may be given by outside critics, the new convention between Russia and Japan is neither more nor less than a tangible proof of our established policy of taking everybody as friend who is not an irreconcilable enemy, the only policy left to us if we would secure our national existence and safety.

How much of American foreign policy falls under the category of diplomacy *de luxe* is not within the scope of this paper. Suffice it to give just one instance to illustrate the meaning of our

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novel title. Secretary-of-State Knox's proposal for the neutralization of Manchurian railways closely followed the State Department's careful examination of, and express satisfaction with, the condition of things then prevailing in Manchuria. And the plan was submitted to Powers without previous consultation with the two whose consent was the only key to its realization. Did Mr. Knox think the Japanese part of Manchurian interests could be purchased at the market value of $100,000,000? Our rights and concessions were obtained at the outlay of ten times as many dollars and of 130,000 of human lives, and these rights and concessions Japan is entitled to retain until 1938. To safeguard China's sovereignty, to insure equal opportunity for all nations, and to establish lasting peace in the Far East—these are certainly very worthy objects of international statesmanship. But the practical statesman must first see unalterable facts as the foundation of his reasoning. Liaotung Peninsula was once formally ceded to Japan and then taken from her by force. Neither China nor any other Power prevented Russia's all but complete occupation of Manchuria. Japan did it for her self-preservation at an enormous expenditure of money and blood. If any person thinks that eastern China could be restored to its condition before the Cassini Convention in 1896 or before the Russo-Japanese war of 1904-05, such a person is certainly anything but a practical statesman. A man of Mr. Knox's shrewdness and ability must certainly have seen the impracticability of his proposal. If he made it for some other object, such as a judicial record or moral prestige, then he belongs to the class "diplomatists *de luxe*."

Outside the responsible Government there is in evidence a great deal of diplomacy *de luxe* in this country. Mr. Hearst's papers, for instance, are a notorious case in point. Another instance is furnished by individual speakers and writers, such as Congressman Hobson and Mr. T. F. Millard. That there is a demand for their speeches and writings seems to indicate that those alarmists and agitators serve some useful purpose in the community. They may be promoting business interests of some kind, or awakening people to the need of more armaments, or chastising wrong-doers in the field of world politics. But the fact that they do their work to the apparent injury of their own country or somebody else's is what makes them playing-with-fire politicians.

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What a luxury, what an unnecessary expenditure of national energy they indulge in!

Mr. Millard's recent article, for example, is a capital achievement in belittling the State Department and raising the Japanese Government to a superhuman height. He gathers facts and circumstantial evidence from what he "considers reliable sources" and puts them in a splendid martial array to lead up to his favorite theme and foregone conclusion, that, in the name of civilization and for American prestige and interest, Japan must be checked with something more effective than moral pressure.

Yuan Shih-kai's fall, Mr. Millard declares, was a great opportunity for Japan to press her demands on the Peking authorities. But he carefully, or innocently, ignores the fact that Japan really regretted the retirement of the great Chinese statesman. She knew well that, if he had continued in power, her negotiations with China would have been conducted more smoothly. His clear foresight on important matters would have seen the disadvantage of quarrelling with Japan on minor affairs. Mr. Millard, again, strongly objects to Mr. Knox's acquiring his knowledge of Far-Eastern conditions from Mr. Wilson, Assistant Secretary of the State Department, who lived in Tokio many years and is a Pro-Japanese American. Mr. Denison, American adviser to the Foreign Office of the Imperial Government, also incurs Mr. Millard's displeasure for imparting useful knowledge to Mr. Wilson and thus influencing Mr. Knox indirectly. The State Department's request to Mr. Crane, the Minister to China, to proceed to his post *viâ* Tokio was a terrible blunder, in this writer's judgment. No well-balanced mind, however, will fail to recognize the kindness and justice of consulting and weighing Japan's claims before an American diplomatist begins to handle Far-Eastern affairs. Mr. Millard's single desire being that a high-handed American policy be thrust in the face of Japan, sympathetic consideration of the latter's position in Manchuria is, of course, out of the question.

He alleges that, if Mr. Crane had gone to China through Europe and Siberia as was originally planned, he would have dropped in upon the Ito-Kokovtseff meeting at Harbin and "his presence might have injected a new element, which, in its psychological effect upon the situation in the East, would have been far-reaching." Therefore, Mr. Millard laboriously infers, Japan ma-

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nœuvred to make the American Minister to China travel through Tokio instead. Are the Washington officials so helpless before the wiles of their Tokio colleagues? Is it not saner to believe that the State Department had its own reasons, not Japan's, in asking Mr. Crane to change his route? If Mr. Crane's casual presence in Harbin could have frustrated the object of that Russo-Japanese conference, perhaps his magical influence might have saved Prince Ito from assassination!

The Knox proposal gave Japan a rude awakening, says the same writer, after a long period of easy twisting of American diplomacy around her fingers. It is true, Japan was puzzled by the contents of the proposal and the manner of its presentation. But whether the Tokio Government was put out or not, only the previous and subsequent course of action can tell. Perhaps this proposal proved an occasion for bringing the latest agreement with Russia to an earlier consummation. In a similar way, the American-Japanese convention of 1908 was concluded soon after Tang Shao-yi's visit to Washington. Persistent rumors decided that the convention was to offset the proposed alliance between America and China. But hard facts reveal that a similar *entente* was set on foot by the previous Ambassador from Japan in the preceding year.

On the whole, this method of attributing all appearances to the worst possible motive will only injure both countries concerned. Such a policy is worse than wasteful. Mr. Millard has convinced us that there is no altruism in diplomacy, but he has yet to learn that unnecessary hostility is poor diplomacy.

National pride forbids recounting the diplomatic blunders Japan has scored against herself. But fairness demands adverting to a few of them, to illustrate that diplomacy of necessity is not always successful, as no kind of diplomacy can be, so long as it is handled by frail mortals. Neither are Japanese statesmen so miraculously astute and far-seeing as Mr. Millard would make them. In the humiliation and consternation of the Triple intervention, one thought of vital importance did not occur to them—the thought of restoring Liaotung Peninsula to China on the explicit condition of not ceding or leasing that part of Manchuria to any power. This could have been done without much difficulty and would probably have forestalled future conflict with Russia. We allowed the Germans to lease Kiaochou without a

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word of protest, either to Germany or to China, in spite of the fact that Germany was one of the three Powers that was opposed to Japan's presence in continental China as prejudicial to the peace of the Far East. The Philippine Islands fell into the hands of the United States with blessings from some statesmen of Tokio. They said at the time that, if the Filipinos could not govern themselves, America surely was the best country to rule them and the safest to be so near Japan. What a radical change from the former attitude of feeble resistance to America's annexation of the Hawaiian Islands! Now that the possession of the Philippines has furnished grounds for "striking the Oriental eyes" with a huge demonstration of American navies, for self-appointed diplomats to claim boldly the "American domination of the Pacific" as an Asiatic Power, for an occasional alarm of the approaching necessity for an armed opposition to Japan's policy in Manchuria, we deeply regret not having bought the islands, however onerous the burden of national debt, while there was such a possibility some years ago.

To prevent misunderstanding, this point requires further explanation. Suppose Japan were a nation ten or twenty times richer and stronger. Suppose she came to own the Philippine Islands. Suppose next that circumstances forced Japan to be master of the Hawaiian group. Suppose, when these stepping-stones were acquired on the ocean, that Japan thereby was calling herself a Pacific Power, and using or talking of using that position of vantage for enforcing the "open door" in the United States for Oriental immigration, or for interfering in the affairs of a South-American Republic where Japan had some commercial or immigration interests. In these imaginary circumstances, the United States, without the least desire for territorial aggression, would certainly curse the day when she failed to buy or take the Sandwich Islands.

Japan made a bad blunder of the San Francisco school episode, as we now view it. Eager to have her national dignity respected, forgetting that her sudden rise in power had caused alarm and suspicion even in the most friendly nation, altogether too much fuss was made of an insignificant, local affair. As a result, America suspected Japan of evil designs, first on American wealth, then on her oversea possessions, and finally on Manchurian provinces. Through a quick succession of understandings and

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agreements with European and American Powers, Japan earned China's nervous suspicion as to whether all these diplomatic instruments were not really directed against herself. Our high-handed policy in the Tatsu Maru incident and in the reconstruction of the Antung-Mukden railway has alienated China to some extent, after sincere efforts had been made on both sides toward *rapprochement* on the ground of cultural and racial affinity.

A third kind of foreign policy, which may tentatively be called "truckling diplomacy," is represented by China—the diplomacy of appealing to a third Power for protection or interference in order to check the influence of the second. This policy followed in a minor scale has spelled the practical ruin of Korea. To palliate the aggression of China and Japan, the peninsular Government used to pay tribute to both alternately or simultaneously. When the Chinese power waned in the peninsula as a result of the Chino-Japanese war, Russia was invited and encouraged to cause subsequently that tremendous struggle which made Korea Japan's protectorate. If she had conducted herself worthily, if her strong neighbors had been in harmony, the Hermit Kingdom might have earned a position of honorable neutrality, as of Switzerland in Europe. Turning to China, when defeated by Japan, apparently she appealed to the northern Power for interference. Liaotung Peninsula was thus saved for a while, but later the court at Peking found itself losing the whole of Manchuria, including the part restored to China through the triple intervention. As a sequel to the Russo-Japanese war, China is now inclined to lean on the United States to minimize and, if possible, to expel all foreign domination. Should America take an active and warlike part in the affairs of China, that in itself may hasten the evil day of the latter's final dissolution. If, on the contrary, America lets China clearly understand that nothing but moral support and sympathy is forthcoming from the trans-Pacific Power, that may yet awake the ancient Empire to its last and only means of salvation, and save China at last by dint of self-determination and self-dependence. This policy of losing the whole in a vain effort to save a part has its counterpart in the Chinese proverb, "To try to rectify the horns and kill the bullock."

M. HONDA.

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# REBELLION.

BY HENRY W. NEVINSON.

For certain crimes mankind has ordained penalties of exceptional severity, in order to emphasize a general abhorrence. In Rome, for example, a parricide, or the murderer of any near relation, was thrown into deep water, tied up in a sack together with a dog, a cock, a viper, and a monkey, which were probably symbols of his wickedness, and must have given him a lively time before death supervened. Similarly, the English law, always so careful of domestic sanctitude in women, provided that a wife who killed her husband should be dragged by a horse to the place of execution and burnt alive. We need not recall the penalties considered most suitable for the crime of religious differences—the rack, the fire, the boiling oil, the tearing pincers, the embrace of the spiky Virgin, the sharpened edge of stone on which the doubter sat, with increasing weights tied to his feet, until his opinions upon the heavenly mysteries should improve under the stress of pain. When we come to rebellion, the ordinance of English law was more express. In the case of a woman, the penalty was the same as for killing her husband—that crime being defined as "petty treason," since the husband is to her the sacred emblem of God and King. So a woman rebel was burnt alive as she stood, head, quarters and all. But male rebels were specially treated, as may be seen from the sentence passed upon them till the reign of George III. These were the words that Judge Jeffreys and Scroggs, for instance, used to roll out with enjoyable eloquence upon the dazed agricultural laborer before them:

"The sentence of the Court now is that you be conveyed from hence to the place from where you came, and from there be drawn to the place of execution upon hurdles; that you be hanged by the neck; that

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you be cut down alive; that your bowels be taken out and burnt in your view; that your head be severed from your body; that your body be divided into four quarters, and your quarters be at the disposition of the King: and may the God of infinite mercy be merciful to your soul. Amen."

"Why all this cookery?" once asked a Scottish rebel, quoted by Swift. But the sentence, with its confiding appeal to a higher Court than England's, was literally carried out upon rebels in this country for at least four and a half centuries. Every detail of it (and one still more disgusting) is recorded in the execution of Sir William Wallace, the national hero of Scotland, more generally known to the English of the time as "the man of Belial," who was executed at Tyburn in 1305.* The rebels of 1845 were, apparently, the last upon whom the full ritual was performed, and Elizabeth Gaunt, burnt alive at Tyburn in 1685 for sheltering a conspirator in the Rye House Plot, was the last woman up to now put to death in this country for a purely political offence. The long continuance of so savage a sentence is proof of the abhorrence in which the crime of rebellion has been held. And in many minds the abhorrence still subsists. Sir James Fitzjames Stephen, for instance, one of our greatest authorities on criminal law, wrote in 1880:

"My opinion is that we have gone too far in laying capital punishment aside, and that it ought to be inflicted in many cases not at present capital. I think, for instance, that political offences should in some cases be punished with death. People should be made to understand that to attack the existing state of society is equivalent to risking their own lives."†

Among ourselves the opinion of this high authority has slowly declined. No one supposed that Colonel Lynch, for instance, would be executed as a rebel for commanding the Irish Brigade that fought for the Boers during the South African War, though he was condemned to death by the highest Court in the Kingdom. No Irish rebel has been executed for about a century, unless his offence involved some one's death. On the other hand, during the Boer War, the devastation of the country and the destruction of the farms were frequently defended on the ground that, after the Queen's proclamations annexing the two

* See "The History of Tyburn," by Alfred Marks.
† "History of the Criminal Law of England," Vol. I, p. 478.

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Republics, all the inhabitants were rebels; and some of the extreme newspapers even urged that for that reason no Boer with arms in his hands should be given quarter. On the strength of a passage in Scripture, Mr. Kipling, at the time, wrote a pamphlet identifying rebellion with witchcraft. A few Cape Boers who took up arms for the assistance of their race were shot without benefit of prisoners of war. And in India within the last three years many men of unblemished private character have been spirited away to jail without charge or trial and kept there for months—a fate that could not have befallen any but political prisoners.

Outside our own Empire, I have myself witnessed the suppression of rebellions in Crete and Macedonia by the destruction of villages, the massacre of men, women and children, and the violation of women and girls, many of whom disappeared into Turkish harems. And I have witnessed similar suppressions of rebellion by Russia in Moscow, in the Baltic Provinces, and the Caucasus, by the burning of villages, the slaughter of prisoners, and the violation of women. All this has happened within the last thirteen years, the worst part within six and a half. Indeed, in Russia the punishments of exile, torture and hanging have not ceased since 1905, though the death penalty has been long abolished there except for political offences. Last summer I was also present during the suppression of the outbreak in Barcelona, which culminated in the execution of Señor Ferrer under a military Court.

From these recent events it is evident that Sir James Stephen's attitude towards rebellion is shared by many civilized governments. Belligerents—that is to say, subjects of one State engaged in war with another State—have now nominally secured certain rights under International Law. The first Hague Conference (1899) framed a "Convention with respect to the Laws and Customs of Wars on Land," which forbade the torture or cruel treatment of prisoners, the refusal of quarter, the destruction of private property, unless such destruction were imperatively demanded by the necessities of war, the pillage of towns taken by assault, disrespect to religion and family honor (including, I suppose, the honor of women and girls), and the infliction of penalties on the population owing to the acts of individuals for which it could not be regarded as collectively responsible.

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In actual war this Convention may not be invariably observed, but in the case of rebellion there is no such Convention at all. I have known all those regulations broken with impunity, and in most cases without protest from the other Powers. Just as, under the old law of England, the rebel was executed with circumstances of special atrocity, so at the present time, under the name of crushing rebellion, men are tortured and flogged, no quarter is given, they are executed without trial, their private property is pillaged, their towns and villages are destroyed, their women violated, their children killed, penalties are imposed on districts owing to acts for which the population is not collectively responsible—and nothing said. That each Power is allowed to deal with its own subjects in its own way is becoming an accepted rule of international amenity. It was not the rule of Cromwell, nor of Canning, nor of Gladstone, but it has now been consecrated by Sir Edward Grey.

Last summer, it is true, the rule was broken. The present Sultan of Morocco was reported to be torturing his rebel prisoners according to ancestral custom, and rumors came that he had followed a French King's example in keeping the rebel leader, El Roghi, in a cage like a tame eagle, or had thrown him to the lions to be torn in pieces before the eyes of the royal concubines. Then the European Powers combined to protest in the name of humanity. It was something gained. But no great courage is required to rebuke the Sultan of Morocco, if England, France, Germany, Russia, Italy and Spain combine to do it; and his country is so desirable for its minerals, barley, and dates that a little courage in dealing with him may prove lucrative in the end. When Russia treated her rebellious subjects with tortures and executions more horrible than anything reported from Morocco, the case was very different. Then alliances and understandings were confirmed, substantial loans were arranged, Kings and Emperors visited the Tsar and the cannon of our fleet welcomed him to our waters amid the applause of our newspapers and the congratulations of a Liberal Government.

It is evident, then, that, in Sir James Stephen's words, subjects are in most countries still made to understand that to attack the existing state of society is equivalent to risking their own lives. Under our own rule, no matter what statesmen, like Gladstone and Lord Morley, have urged in favor of the mitigation of penal-

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ties for political offences, such offences are, as a matter of fact, punished with special severity; unless, of course, the culprit is intimately connected with great riches, like Dr. Jameson, who was imprisoned as a first-class misdemeanant for the incalculable crime of making private war upon another State; or unless the culprit is intimately connected with votes, like Mr. Ginnell, the Irish cattle-driver, who was treated with similar politeness. Otherwise, until quite lately, even in this country we executed a political criminal with unusual pain. In India we recently kept political suspects imprisoned without charge or trial. And in Manchester and Liverpool we lately sentenced three women to six weeks or two months' hard labor apiece for having broken some panes of glass valued at a few pence while they were imprisoned for political offences four months earlier—a sentence that certainly would never have been imposed on any but a political offender.

This exceptional severity springs from a primitive and natural conception of the State—a conception most logically expressed by Hobbes of Malmesbury under the similitude of a "mortal God" or Leviathan, the almost omnipotent and unlimited source of authority.

"The Covenant of the State [says Hobbes] is made in such a manner as if every man should say to every man: 'I authorize and give up my right of governing myself to this man, or to this assembly of men, on this condition that thou give up thy right to him and authorize all his actions in like manner.' This done, the multitude so united is called a Commonwealth, in Latin Civitas. This is the generation of that great Leviathan, that mortal God, to whom we owe, under the immortal God, our peace and defence."

Hobbes considered the object of this Covenant to be peace and common defence. "Without a State," he said, "the life of man is solitary, poor, nasty, brutish and short." The preservation of the State was to him of transcendent importance.

"Loss of liberty is really no inconvenience, for it is the only means by which we have any possibility of preserving ourselves. For if every man were allowed the liberty of following his own conscience, in such differences of consciences, they would not live together in peace an hour."

Under such a system, it follows that rebellion is the worst of crimes. Hobbes calls it a war renewed—a renouncing of the

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Covenant. He was so terrified of it that he dwelt upon the danger of reading Greek and Roman history (probably having Plutarch and his praise of rebels most in mind)—"which venom," he says, "I will not doubt to compare to the biting of a mad dog." In all leaders of rebellion he found only three conditions—to be discontented with their own lot, to be eloquent speakers, and to be men of mean judgment and capacity (*"De Corpore Politico"* II). And as to punishment:

> "On rebels [he said] vengeance is lawfully extended, not only to the fathers, but also to the third and fourth generations not yet in being, and consequently innocent of the fact for which they are afflicted."

We may take Hobbes as the philosopher of the extreme idea of the State and the consequent iniquity of rebellion. His is the ideal of the Hive, in which the virgin workers devote their whole lives without complaint to the service of the Queen and her State-supported grubs, while the drones are mercilessly slaughtered as soon as one of them has fulfilled his rapturous but suicidal function for the future swarm. The ideal found its highest human example in the Spartan State, which trained its men to have no private existences at all, and even to visit their own wives by stealth. But we find the ideal present in some degree among Central Africans when they bury valuable slaves and women alive with their chief; and among the Japanese when mothers kill themselves if their sons are prevented from dying for their country; and among the Germans when the drill-sergeant shouts his word of command.

In fact, all races and countries are disciples of Hobbes when they address the Head of the State as "Your Majesty" or "Your Excellence," when they decorate him with fur and feathers, and put a gold hat on his head and a gold walking-stick in his hand, and gird him with a sword that he never uses, and play him the same tune wherever he goes, and spread his platform with crimson though it is clean, and bow before him though he is dishonorable, and call him gracious though he is nasty-tempered, and august though he is a fool. In the first instance, we go through all this make-believe because the Leviathan of the State is necessary for peace and self-defence, and without it our life would be solitary, poor, nasty, brutish and short. But we further endow the State with a personality we can almost see and handle, and

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we regard it as something that can not only protect our peace but shed a reflected splendor on ourselves, giving us an importance not our own—just as schoolboys glory in their school, or Churchmen in their Church, or cricketers in their county, or fox-hunters in their pack of hounds.

It is this conception that makes rebellion so rare and so dangerous. In hives it seems never to occur. In rookeries, the rebels are pecked to death and their homes torn in pieces. In human communities we have seen how they are treated. Rebellion is the one crime for which there is no forgiveness—the one crime for which hanging is too good.

Why is it, then, that all the world loves a rebel? Provided he is distant enough in time and space, all the world loves a rebel. Who are the figures in history round whom the people's imagination has woven the fondest dreams? Are they not such rebels as Deborah and Judith* and Joan of Arc; as Harmodius and Aristogeiton, the Gracchi and Brutus, William Tell, William Wallace, Simon de Montfort, Rienzi, Wat Tyler, Jack Cade, Shan O'Neill, William the Silent, John Hampden and Pym, the Highlanders of the Forty-five, Robert Emmet and Wolf Tone and Parnell, Bolivar, John Brown of Harper's Ferry, Kossuth, Mazzini and Garibaldi, Danton, Victor Hugo, and the Russian revolutionists? These are haphazard figures of various magnitude, but all have the quality of rebellion in common, and all have been honored with affectionate glory, romance and even a mythology of worship.

So, too, the most attractive periods in history have been times of rebellion—the Reformation in Germany, the Revolt of the Netherlands from Spain, the Civil Wars in England, the War of Independence in America, the prolonged revolution in Russia. Within the last hundred years alone, how numerous the rebellions have been, as a rule how successful, and in every case how much applauded, except by the dominant authority attacked! We need only recall the French revolutions of 1832, 1848, and 1870 to 1871, including the Commune; the Greek War of Independence up to 1829, the Polish insurrections of 1830, 1863 and 1905; the liberation of the Danubian Principalities, 1858; of Bulgaria and Thessaly, 1878; of Crete, 1898; the revolution in Hungary,

* Judith was not strictly a rebel, except that Nabuchodonosor claimed sovereignty over all the world and was avenging himself on all the earth. See Judith II, 1

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1848; the restoration of Italy, 1849 to 1860; the revolution in Spain, 1868; the independence of the South-American States, 1821 to 1825; the revolution in Russia, Finland, the Caucasus and Baltic Provinces, 1905; the revolution in Persia, 1907 to 1909; and the revolution of the Young Turks, 1908 to 1909. Among these we must also count the Nationalist movements in Ireland, Egypt and India, as well as the present movement of women against the Government in our own country.

Under these various instances two distinct kinds of rebellion are obviously included—the rising of subject nationalities against a dominant Power, as in Greece, Italy, the Caucasus, India and Ireland; and the rising of subjects against their own Government, as in France, Russia, Persia and Turkey, or in England in the case of the Suffragettes. It is difficult to say which kind is the more detested and punished with the greater severity by the central authority attacked. Was the Nationalist rising in the Caucasus or the Baltic Provinces suppressed with greater brutality than the almost simultaneous rising of Russian subjects in Moscow? I witnessed all three, and I think it was, chiefly because soldiers have less scruple in the slaughter and violation of people whose language they do not understand. Did our Government feel greater animosity towards the recent Indian movement or the Irish movement of thirty years ago than towards the rioters for the Reform Bills of 1832 and 1867? I think they did. Vengeance upon external or Nationalist rebels is incited by racial antipathy. But, on the other hand, the outside world is more ready to applaud a Nationalist rebellion, especially if it succeeds, and we feel a more romantic affection for William Tell or Garibaldi than for Oliver Cromwell or Danton; I suppose because it is easier to imagine the splendor of liberty when a subject race throws off a foreign yoke.

So the history of rebellion involves us in a mesh of contradictions. Rebels have been generally regarded as deserving more terrible penalties than other criminals, yet all the world loves a rebel, at a distance. Nationalist rebellions are crushed with even greater ferocity than the internal rebellions of a State, and yet the leaders of Nationalist rebellions are regarded by the common world with a special affection of hero-worship. Obviously, we are here confronted with two different standards of conduct. On one side is the standard of Government, the State

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and Law, which denounces the rebel, and especially the Nationalist rebel, as the worst of sinners; on the other side we have the standard of the individual, the soul and liberty, which loves a rebel, especially a Nationalist rebel, and denies that he is a sinner at all.

Let us leave the Nationalist rebel, whose justification is now almost universally admitted, except by the dominant Power, even if he is unsuccessful, and consider only the rebel inside the State —the rebel against his own Leviathan—whose position is far more dubious. Job's Leviathan appears to have been a more fearsome and powerful beast than the elephant, but in India the elephant is taken as the symbol of wisdom, and when an Indian boy goes in for a municipal examination, he prays to the elephant-god for assistance. Now the ideal State of the elephant is the herd, and yet this herd of wisdom sometimes develops a rebel or "rogue" who seems to be striving after some fresh manner of existence and works terrible havoc among the elephantine conventions. Usually the herd combines to kill him and there is an end of the matter. Yet I sometimes think that the occasional and inexplicable appearance of the "rogue" at intervals during many thousand years may really have been the origin of that wisdom to which the Indians pray.

Similarly, mankind, which sometimes surpasses even the elephant in wisdom, has been continually torn between the Idol of the Herd and the profanity of the rebel or Rogue, and it is perhaps through the rebel—the variation, as Darwin would call him—that man makes his advance. The rebel is what distinguishes our States and cities from the beehives and ant heaps to which they are commonly compared. The progress of ants and bees appears to have been arrested. They seem to have developed a completely socialized polity thousands of years ago, perhaps before man existed, and then to have stopped—stopped dead, as we say. But mankind has never stopped. If a country's progress is arrested—if a people becomes simply conservative in habits, they may die slowly, like Egypt, or quickly, like Sparta, but they die and disappear, unless inspired by new life, like Japan, or by revolution, like France and possibly Russia. For, as we are almost too frequently told, change is the law of human life.

And may not this be just the very reason we are seeking for—

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the very reason why all the world loves a rebel, at a distance? Does not the world unconsciously recognize in him a symbol of change, a symbol of the law of life? We may not like him very near us—not uncomfortably near, as we say. For most change is uncomfortable. When I was shut up for many weeks in a London hospital, I felt a shrinking horror of going out, as though my skin had become too tender for this rough world. After I had been shut up for four months in a siege, daily exposed to shells, bullets, fever and starvation, I felt no relief when the relief came, but rather a dread of confronting the perils of ordinary life. So quickly does the curse of stagnation fall upon us. And in support of stagnation are always ranged the immense forces of Society, the prosperous, the well-to-do, the people who are content if to-morrow is exactly like to-day. In support of stagnation stands the power of every kind of government—the King who sticks to his pretty clothes, the Lords who stick to their lands and titles, the experts who stick to their theories, the officials who stick to their incomes and leisure, the Members of Parliament who stick to their seats.

But even more powerful than all these forces in support of stagnation is the enormous host of those whose first thought is necessarily their daily bread—men and women who dare not risk a change for fear of to-morrow's hunger—people for whom the crust is too uncertain for its certainty to be questioned. We often ask why it is that the poor—the working-people—endure their poverty and perpetual toil without overwhelming revolt. The reason is that they have their eyes fixed on the evening meal, and for the life of them they dare not lose sight of it.

So the rebel need never be afraid of going too fast. The violence of inertia—the suction of the stagnant bog is almost invincible. Like the horse, we are creatures of cast-iron habit. We abandon ourselves easily to careless acquiescence. We make much of external laws, and, like a mother bemused with torpid beer, we stifle the law of the soul because its crying is such a nuisance. Like a new baby, a new thought is fractious, restless, and incalculable. It saps our strength; it gives us no peace; it exposes a wider surface to pain. There is something indecent, uncontrolled and unconscionable about it. Our friends like it best when it is asleep, and they like us better when it is buried.

There is very little danger of rebellion going too far. The



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barriers confronting it are too solid, and the Idol of the Herd is carefully enshrined. A perpetual rebellion of every one against everything would give us an insecure, though exciting, existence, and we are protected by man's disposition to obedience and his solid love of custom. Against the first vedettes of rebellion the army of routine will always muster, and it gathers to itself the indifferent, the startled cowards, the thinkers whose thought is finished, the lawyers whose laws are fixed—an innumerable host. They proceed to treat the rebels as we have seen. In all ages, rebellion has been met by the standing armies of permanence. If captured, it is put to the ordeal of fire and water, so as to try what stuff it is made of. Faith is rebellion's only inspiration and support, and a deal of faith is needed to resist the battle and the test. It was in thinking of the faith of rebels that an early Christian writer described how those who have walked by faith have in all ages been tortured, not accepting deliverance; and others have had trial of mockings and scourgings, and of bonds and imprisonment; they were stoned, they were sawn asunder, were tempted, were slain with the sword; they wandered about in sheepskins and goatskins; being destitute, afflicted, tormented; (of whom the world was not worthy) they wandered in deserts and in mountains, and in dens and caves of the earth.* That is the test and the reward of faith. So strong is the grip of the Leviathan, so determined is mankind to allow no change in thought or life to survive if he can possibly choke it.

One of the most learned and inspiring of writers on political philosophy has said in his latest book:

> "It is advantageous to the organism [of the State] that the rights of suggestion, protest, veto and revolt should be accorded to its members."†

That sounds very simple. We should all like to agree with it. But under that apparently innocent sentence one of the most perplexing of human problems lies hidden: what are the rights of liberty, what are the limits of revolt? Only in a State of ideal anarchy can liberty be complete and revolt universal, because there would be nothing to revolt against. And anarchy, though it is the goal of every man's desire, seems still far away, being, indeed, the Kingdom of Heaven, which the God rules whose service is

* Hebrews, XI, 35-38.
† "The Crisis of Liberalism," by J. A. Hobson, p. 82.

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perfect freedom and which only angels are qualified to inhabit. For though the law of the indwelling spirit is the only law that ought to count, not many of us are so little lower than the angels as to be a law unto ourselves.

In a really democratic State, where the whole people had equal voices in the government and all could exercise free power of persuasion, active rebellion, I think, would be very rare and seldom justified. But there are, I believe, only four democratic States in the world. All four are small, and of those Finland is overshadowed by despotism, and Australia and New Zealand have their foreign relations controlled and protected by the mother country. Hitherto the experiment of democracy has never been tried on this planet, except for the last year in Norway, and even there with some limitations; and though democracy might possibly avert the necessity of rebellion, I rather doubt whether it can be called advantageous to any State to accord to its members the right of revolt. The State that allows revolt—that takes no notice of it—has abdicated; it has ceased to exist. But whether advantageous or not, no State has ever accorded that right in matters of government, nor does mankind accord it, without a prolonged struggle, even in religious doctrine and ordinary life. Every revolt is tested as by fire, and we do not otherwise know the temper of the rebels or the value of their purpose. Is it a trick? Is it a fad? Is it a plot for contemptible ends? Is it a riot—a moment's effervescence—or a revolution glowing from volcanic depths? We only know by the tests of ridicule, suffering and death. In his Ode to France, written in 1797, Coleridge exclaimed:

> "The Sensual and the Dark rebel in vain,
> Slaves by their own compulsion."

They rebel in vain because the Sensual and the Dark cannot hold out long against the pressure of the Herd—against the taunts of Society, against poverty, the loss of friends, the ruin of careers, the discomforts of prison, the misery of hunger and ill-treatment, and the terror of death. It is only by the supreme triumph over such obstacles that revolt vindicates its righteousness.

And so, if any one among us is driven to rebellion by an irresistible necessity of soul, I would not have him wonder at the treatment he will certainly receive. Such treatment is the

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hideous but inevitable test of his rebellion's value, for so persecuted they the rebels that were before him. Whether he rebels against a despotism like the Naples of fifty years ago or the Russia of to-day; or whether he rebels against the opinions or customs of his fellow citizens, he will inevitably suffer, and the success that justifies rebellion may not be of this world. But if his cause is high, the shame of his suffering rests invariably on the Government or on the majority, never on himself. There is a sense in which rebellion never fails. It is almost always a symptom of intolerable wrong, for the penalties are so terrible that it would not be attempted without terrible provocation. It concentrates attention upon the wrong. At the worst, though it be stamped into a grave, its spirit goes marching on, and the inspiration of all history would be lost were it not for rebellions, no matter whether they have succeeded or failed. It may be said that if the State cannot accord the right of revolt, the door is left open to all the violence, cruelty and injustice with which rebellion is at present suppressed. But that does not follow. The Liberal leaders of the last generation endeavored to draw a distinction whereby political offenders should be treated better than ordinary criminals rather than worse, and, though their successors went back from that position, we might perhaps discern a certain uneasiness behind their appearance of cruelty, at all events in the case of titled offenders. In war we have lately introduced definite rules for the exclusion of cruelty and injustice, and in some cases the rules are observed. The same thing could be done in rebellion. I have often urged that the rights of war, now guaranteed to belligerents, should be extended to rebels. The chances are that a rebellion or civil war has more right on its side than international war, and there is no more reason why a man should be tortured and refused quarter, or why a woman should be violated and have her children killed before her eyes by the agents of their own Government than by strangers. Yet these things are habitually done, and my simple proposal appears ludicrously impossible. Just in the same way, fifty years ago, it was thought ludicrously impossible to deprive a man of his right to whip his slave.

But in any case, whether or not the rebel is to remain for all time an object of special vengeance to the State and Society, he has compensations. If he wins, the more barbarous his suppres-

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sion has been, so much the finer is his triumph, so much the sweeter the wild justice of his revenge. It is a high reward when the slow world comes swinging round to your despised and persecuted cause, while the defeated persecutor whines at your feet that at heart he was with you all the time. If the rebel fails—well, it is a terrible thing to fail in rebellion. Bodily or social execution is almost inevitably the result. But, if his cause has been high, whether he wins or loses, he will have enjoyed a comradeship such as is nowhere else to be found—a comradeship in a common service that transfigures daily life and takes suffering and disgrace for honor. His spirit will have been illumined by a hope and an indignation that make the usual aims and satisfactions of the world appear trivial and fond. To him it has been granted to hand on the torch of that impassioned movement and change by which the soul of man appears slowly to work out its transfiguration. And if he dies in the race, he may still hope that some glimmer of freedom will shine where he is buried.

HENRY W. NEVINSON.

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# BUSINESS ENTERPRISE AND THE LAW.

BY GILBERT HOLLAND MONTAGUE.

FROM the end of the Civil War until the passage of the Interstate Commerce Act and the Sherman Anti-Trust Act, popular faith in competition, unhindered by governmental interference, continued practically undisturbed. "In the early history of railroad transportation," said Attorney-General Moody, later Justice of the Supreme Court of the United States, in his annual report for 1906, "the practice of rebating was common, well understood, and not prohibited by any Federal statute. It was regarded as one aspect of the spirit of competition which the common law cherished." The last century conception of competition and freedom of contract and absolute individualism of conduct, unhampered by any legal restrictions, was rooted in the theory of the Declaration of Independence and the Constitution, and fostered by the tremendous commercial progress which it had produced. Against this principle, the Interstate Commerce Act, which prohibited private bargaining between the railroad and the shipper, and the Sherman Anti-Trust Act, which forbade the attainment of industrial dominance, toward which all competition aimed, seemed incongruous and irrational contradictions,—weapons pusillanimously seized by the industrially unfit against their superiors.

The spiritless enforcement of these statutes, from the time of their enactment until 1903, shows how pharisaical they were generally considered by the community. "A careful examination," to quote again from Attorney-General Moody, "discloses that there were in those years seventy-nine indictments (under the Interstate Commerce Act), upon which the Government failed in sixty-two and succeeded in seventeen. No sentences

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of imprisonment were executed and the total fines amounted to $16,376. It is safe to say that these penalties, distributed over many years, were, as deterrents from the commission of prohibited offences, a negligible factor." The indifferent enforcement of the Sherman Anti-Trust Act was still more conspicuous. Attorney-General Olney, in his annual report for 1893, protested "that as all ownership of property is of itself a monopoly, and as every business contract or transaction may be viewed as a combination which more or less restrains some part or kind of trade or commerce, any literal application of the provisions of the statute is out of the question." Reviewing the prosecutions, brought under the Sherman Anti-Trust Act during this period, Attorney-General Moody stated: "From the date of the enactment of the law to the beginning of President Roosevelt's administration in 1901, sixteen proceedings were begun and have been concluded—five of them indictments, in all of which the Government has failed, and eleven of them petitions in equity, in which the Government prevailed in eight and failed in three. . . ." The apathetic enforcement of the Interstate Commerce Act and the Sherman Anti-Trust Act, during this period, was due not so much to reluctance on the part of the prosecutors as to the conviction of the community that a vigorous enforcement of these statutes was contrary to the approved mode of business competition.

During the decade immediately succeeding the war with Spain, a series of events occurred which shook this long-cherished popular belief. Investigation into the management of certain railroads, insurance companies, and street railways revealed startling corruption and dishonesty. Newspapers and magazine-writers attacked methods of business competition which previously had never been questioned. The indignation thus engendered stirred depths of popular conscience which had never been aroused by the agitation for the Interstate Commerce Act, nor by the clamor for the Sherman Anti-Trust Act. The opinion grew that business competition, at least in some of its manifestations, was a crude and unjust force in the social economy.

In 1903, the Roosevelt administration had practically only two statutes through which the Federal Government could exercise any control or interference with competition. These

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statutes were the Interstate Commerce Act and the Sherman Anti-Trust Act.

In response to increasing popular demand, Congress appropriated, in 1903, $500,000 to be expended by the Attorney-General in prosecutions under these statutes. At the same time, acts were passed facilitating trials under these statutes, and particularly strengthening the hands of the Government in dealing with discriminatory practices of railroads. The Department of Commerce and Labor was created, and invested with abundant powers to investigate large business concerns everywhere.

In 1903, the Interstate Commerce Commission stated that discriminatory practices were no longer characteristic of railroad operations, and that never before had the law been so strictly observed.

In 1905, however, came the revelations of the collusion between certain freight-shippers and several high officials of the Pennsylvania Railroad. About the same time came the disclosures regarding conspicuous breaches of trust on the part of certain officers of the largest life-insurance companies in the country.

Responding again to popular demand, each Federal prosecuting officer was instructed, in a circular letter from the Attorney-General, to proceed in each case brought to his attention showing a violation of the Interstate Commerce Act and the Sherman Anti-Trust Act. As a result, seventy-seven indictments were returned under the Interstate Commerce Act, upon which thirteen corporations and seventeen individuals were found guilty. The corporations were fined in sums ranging from $15,000 to $108,000 each, and the individuals were fined in sums ranging from $1,000 to $10,000 each. During the succeeding year several sentences of imprisonment were inflicted, and fines aggregating $416,125 were imposed. Equal activity was displayed in the enforcement of the Sherman Anti-Trust Act. Proceeding upon the construction of the Act which the Government had successfully applied in the Northern Securities Case, the Government procured the dissolution of the "Beef Trust," composed of Swift & Co. and its allied concerns, and began proceedings against the General Paper Company and its associated companies, familiarly called the "Paper Trust," and against various combinations in the grocery, beef, lumber and

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transportation business. By the close of 1906, the Roosevelt administration had a record of twenty-three proceedings commenced under this Act, seven of which had been successfully concluded and the rest still pending. These included proceedings against the American Tobacco Company and several other corporations interested in the tobacco and licorice business, against thirty-one corporations and twenty-five individuals engaged in the manufacture of fertilizer, against the Standard Oil Company and seventy other corporations and individuals concerned in the manufacture of refined oil and petroleum products, and against combinations in transportation, paper, groceries, elevators, salt, meat, lumber, dry-goods, oil, tobacco, fertilizer and ice. Before the close of the administration thirty-seven such proceedings had been begun under the Sherman Anti-Trust Act.

The activity of the Federal administration was exceeded by the zeal of the State Legislatures. In 1899, Texas had passed laws relieving persons purchasing goods of a trust from liability to pay the purchase price, and requiring every corporation that owned or leased the patent of a machine to offer such machines for sale, instead of reserving them for exclusive use. In 1905, Arkansas relieved persons purchasing goods of a trust from liability to pay therefor, and authorized such persons to recover from the trust any money or value paid on account of such goods. Arkansas also enacted that in the prosecution of any trust the prosecuting attorney might compel any non-resident to appear with his books and papers, within six days and the necessary time required to travel; and in the event of his failure to appear, the trust was made liable to judgment on default. In 1907, the Governor of Texas recommended a law empowering the Attorney-General to have "full and free access to all the works, plants, officers, books, vouchers and papers" of any corporation doing business in Texas without reference to whether such works, offices and papers were within the State or without it. Legislation in accordance with this recommendation was adopted, with the added provision that if access to works, offices and papers outside the State were denied, judgment might be rendered against the trust. At the same time, Texas increased the penalty for violation of its anti-trust act to imprisonment for ten years. Already a number of States had imposed enor-

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mous penalties upon the sale of commodities at less than the "cost of manufacture," or at a price greater or less than their "fair market value," or at a price greater or less than such commodities were sold for in any other place "under like conditions." These penalties were fines varying from $1,000 to $10,000 and terms of imprisonment running from one year to ten years. In 1907 such statutes had been enacted in specially drastic form in Indiana, Mississippi, Arkansas, Missouri, Minnesota, North Carolina, Kansas, Iowa, South Carolina, Texas and North Dakota; and similar legislation had been recommended by the Governors of California and Colorado.

Meanwhile the railroads had not escaped attention. In 1903, ten States enacted statutes giving to their railroad commissions increased powers to fix freight and passenger rates and to supervise the details of operation. These States were Kansas, Arkansas, Florida, Missouri, North Carolina, South Carolina, North Dakota, Texas, Virginia and Wisconsin. In 1905, the powers of the railroad commissions were greatly increased in Georgia, Minnesota, Illinois, California, South Carolina, Kansas, Indiana, Washington and Wisconsin. In 1906, Ohio, Nebraska, Georgia, Louisiana, South Carolina, Kentucky and Wisconsin increased still further the powers of their railroad commissions. In 1907, railroad commissions were either created or vested with increased powers in Arkansas, Florida, Georgia, Indiana, Iowa, Kansas, Minnesota, North Carolina, Missouri, North Dakota, South Dakota, Alabama, Colorado, Montana, Pennsylvania, New York, New Jersey, Nevada, Michigan, Nebraska and Oregon. At the same time statutes of more arbitrary character were also enacted. In 1905, the Legislatures of Kansas, Washington, Missouri and Oklahoma passed laws fixing rigid regulations regarding freight rates, car service, demurrage and storage charges upon all railroads operating within their limits; and North Carolina enacted that if a consignee claimed damages on a shipment, and the claim remained unpaid for sixty days, and the consignee recovered the full amount by suit, the railroad should pay a penalty of fifty dollars. Florida prescribed a somewhat similar penalty in analogous circumstances. In 1906, Ohio, Virginia and Maryland adopted laws limiting passenger rates, except in minor exceptions, to two cents per mile. Similar bills were adopted in at least nine other States. Ar-

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kansas enacted that every railroad train passing through a town within half a mile of the State line should stop for passengers, unless it stopped within three hundred feet on the other side of the line; and also provided that the consignee might collect any damage claim, not exceeding ten dollars, from the railroad agent at the destination, provided that he presented to the agent an itemized and verified statement of the damage within three days after the goods were received; and in the event that payment were refused, he might recover treble damages. Georgia required that claims for damages be paid by the railroad within sixty days under penalty of fifty dollars and interest.

In 1907, the passion for arbitrary legislation against railroads became almost national. Recommendations for the statutory regulation of railroad rates were made by the Governors of Alabama, California, Missouri, Arkansas, Colorado, Kansas, Massachusetts, Minnesota, Nebraska, North Dakota, West Virginia and Wisconsin. Maximum rates for passenger traffic—generally two cents a mile—were urged by the Governors of Indiana, Iowa, Kansas, Michigan, Minnesota, North Carolina, Pennsylvania and Texas. Statutes in accordance with the latter recommendations were passed by Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Carolina, North Dakota, Pennsylvania, South Dakota, West Virginia and Wisconsin. Maximum rates for particular articles of freight were enacted in Alabama, Kansas, Minnesota, Missouri, Nebraska, North Carolina and North Dakota. Alabama took a leaf from the experience of North Carolina, Florida, Arkansas and Georgia and passed statutes similar to those of the latter States requiring substantially immediate payment by the railroads of all claims for damages under very heavy penalties.

This hostility toward large corporations was cleverly invoked by the Federal administration in support of measures conferring increased supervisory powers upon the Federal branch of the Government. In May, 1906, while the Hepburn Railroad Rate Bill was being debated in the Senate, the President sent a special message to Congress denouncing the "unfair advantage over its competitors" enjoyed by the Standard Oil Company, and declaring that the enactment of a law, giving the Interstate Commerce Commission the right to fix railroad rates, was neces-

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sary in order to prevent such abuses. In the storm of popular feeling aroused by this message, the bill was passed. While the Pure Food Bill and Meat Inspection Bill were meeting opposition in Congress, the President made public the report of the investigation of the Chicago packing establishments. In the national revulsion aroused by this disclosure, these bills were passed. While the passion for Federal control was highest, an Employers' Liability Law—since declared to be an unconstitutional exercise of Federal power—was enacted, a National Child's Labor Bill was agitated, and the Federal regulation of large businesses generally was vigorously urged in Presidential messages and in the various reports of the Commissioner of Corporations.

The extreme to which this spirit of governmental interference was pushed would have been inconceivable a generation ago. In 1907, the Commissioner of Corporations in a report upon a private industrial enterprise, repeatedly spoke of "reasonable commercial return," "average competitive profit," "average business return," and "normal rate of profit," meaning to describe his personal standard for determining the degree in which the prices and profits of a private enterprise were "reasonable" or "unreasonable." Inferentially, the Commissioner indicated that this standard of "reasonable commercial return" was about ten per cent., that any profit upon business investment in excess of this return proved that prices were unreasonable, and that the concern obtaining such profits was oppressive and illegal.

In the same spirit, Representative Hepburn, at the suggestion of President Roosevelt, in 1908 prepared a bill to amend the Sherman Anti-Trust Act, and introduced it into Congress. This bill proposed to leave it to the Bureau of Corporations to define what combinations were guilty of crime. The original mischief of the Sherman Anti-Trust Act, in outlawing organized capital and organized labor, was sought to be tempered by a system of special immunity. The dispensation of this immunity was not entrusted to the courts, but to a bureau in the Department of Commerce and Labor. Under such a statute, every business man making contracts relating to interstate commerce, and desiring to escape the penalties of the law, was required to file his contract with a Government bureau and then wait for sixty days before completing or executing the contract! But the bill died in the committees of the House and the Senate.

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These proposals of strict governmental control have not always originated among legislators and Government officials. The Hepburn Bill of 1908 was drafted with the assistance of Mr. Francis Lynde Stetson, chief counsel of the United States Steel Corporation, and Mr. Victor Morawetz, chairman of the board of directors of the Atchison, Topeka & Santa Fe Railway. Such a plan had frequently been urged before popular audiences by Judge Elbert H. Gary and Mr. George W. Perkins, of the United States Steel Corporation, and was informally put in practice for their benefit during the panic of 1907, when the administration, acting under the belief that it was saving a great financial institution, virtually granted a special amnesty and dispensation of the Sherman Anti-Trust Act to the United States Steel Corporation by permitting the acquisition by that company of the Tennessee Coal & Iron Company. Through a similar dispensation, no less substantial because it was tacit, the United States Steel Corporation and the larger independent steel companies, without effort at concealment and without fear of prosecution, united during the year that followed to "maintain the stability of their market, working together for one another"—to use Judge Gary's phrase—"as opposed to the unreasonable and destructive competition of the past." Only a year ago the Standard Oil Company proposed to the State of Missouri, as a desperate alternative to exclusion from the State, that a new Missouri corporation be formed to take over all the property and business of the Standard Oil Company in the State and that the new corporation should be controlled by two trustees, one selected by the State and one by the Company, in such manner that "a fair, just, lawful and proper treatment" should be secured to the public as well as to the owners. A similar suggestion was made to the State of Kansas by the International Harvester Company, which had been convicted in that State of a violation of its anti-trust law. Such a régime of governmental benevolence and paternalism is only a step removed from the fulfilment of Mr. Andrew Carnegie's prophecy that a "supreme industrial court will have to be created and eventually will have to pass upon prices."

The reasons underlying these radical proposals seem to be these: Upon their face the anti-trust statutes of the United States and of the several States are so indefinite as to be open

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to the most arbitrary and capricious interpretation. So long as these statutes continue in force, these corporations do business only upon the sufferance and personal whim of the prosecuting authorities and the judges and juries charged with enforcing the law. To avoid this peril—the corporation managers reason—these laws should be enforced, not by judges and juries, but by experts.

In the main, all statutes in the direction of these radical proposals have been disappointing. As regards the railroads, drastic legislation has practically abolished discriminatory practices and has thus kept the word of promise to the ear. But so far as decreasing or readjusting freight rates is concerned, it has broken the promise of hope to the heart. In this respect the Interstate Commerce Commission and the various State railroad commissions have done little more than demonstrate the reasonableness of the rates which the railroads themselves had previously established. The State of Virginia invoked the aid of the Federal courts to restrain its own Railroad Commission from enforcing rulings which permitted an increase of rates for the improvement of transportation conditions in Virginia, until in 1908 the Supreme Court of the United States refused to permit such interference. Meanwhile, legislation arbitrarily fixing railroad rates and service has been a failure. In 1906, the United States Supreme Court declared unconstitutional the Texas statutes compelling railroads to furnish a certain number of cars on any specified date. In 1908, the Supreme Court of Pennsylvania declared unconstitutional the two-cent-rate-fare law of that State. In the same year the United States Supreme Court declared unconstitutional the rate acts adopted by Minnesota and North Carolina, on the ground that they were confiscatory, and that the enormous penalties which they imposed were unjust. Litigation regarding the constitutionality of the two-cent-rate-fare legislation is pending in half a dozen other States, and several decisions of the lower courts—notably in Missouri—have held such rates to be confiscatory. In States where the severest laws have been enacted, railroad extension and improvement have practically ceased. The Attorney-General of Missouri recently declared that the enforcement of the anti-trust laws of that State would paralyze one-third of the entire business

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of the State. Missouri, Kansas and several of the Southern and Southwestern States are now experiencing a reaction from radical legislation. During the past six years anti-trust laws in five States have been declared by the highest courts to be unconstitutional because they unfairly discriminated against corporations in favor of certain privileged classes in the community.

Still more disappointing has been the operation of the Sherman Anti-Trust Act. Judge Lacombe, in his opinion in the "Tobacco Trust" case, stated the consequences of the Act in vivid language:

"The act may be termed revolutionary because before its passage the courts had recognized a 'restraint of trade' which was held not to be unfair, but permissible, although it operated in some measure to restrict competition. By insensible degrees, under the operation of many causes, business, manufacturing, and trading alike has more and more developed a tendency toward larger and larger aggregations of capital and more extensive combination of conditions. In that way only can production be increased and cheapened, new markets opened and developed, stability in reasonable prices secured, and industrial progress assured. But every aggregation of individuals or corporations formerly independent, immediately upon its formation terminates an existing competition; whether or not some other competition may subsequently arise, the act, as above construed, prohibits every contract or combination in restraint of competition. Size is not made the test. Two individuals, who have been driving rival express-wagons between villages in contiguous States, who enter into a combination to join forces and operate a single line, restrain an existing competition, and it would seem to make little difference whether they make such a combination more effective by partnership or not."

The same logic determined the recent decision of the United States Circuit Court in the Standard Oil case. By the same logic, as Judge Lacombe points out, the smallest combination affecting trade between two States is subject to the same penalty that is prescribed for the most oppressive monopoly. In his annual message in 1906 President Roosevelt said:

"The actual working of our laws has shown that the effort to prohibit all combination, good or bad, is noxious where it is not ineffective. . . . No more scathing condemnation could be visited upon a law than is contained in the words of the Interstate Commerce Commission when, in commenting upon the fact that the numerous joint traffic associations do technically violate the law, they say: 'The decision of the United States Supreme Court in the Trans-Missouri case and the Joint Traffic Association case has produced no practical effect upon

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the railway operations of the country. Such operations, in fact, exist now as they did before these decisions and with the same general effect. In justice to all parties we ought probably to add that it is difficult to see how our interstate railways could be operated with due regard to the interest of the shipper and the railway without concerted action of the kind afforded through these associations.' This means that the law as construed by the Supreme Court is such that the business of the country cannot be conducted without breaking it."

In his annual message in 1907 and in his special messages of January 31, 1908, and March 25, 1908, President Roosevelt repeated the same criticism. Similar strictures have repeatedly been uttered by President Taft and by Attorney-General Wickersham.

At the present time, the normal transactions of business are forbidden by highly penal statutes. Business men now enjoy liberty only according as the prosecuting authorities indulge them in the open breach of the law. Plainly, our legislation respecting large business must be confessed to be a failure.

The causes of this failure are simple. The legislation upon which we heretofore have relied has been directed toward two absolutely inconsistent purposes: the furtherance of free competition, and at the same time the prohibition of the very agencies and organizations in which free competition most normally expresses itself. The Sherman Anti-Trust Act and the anti-trust laws of most of the States are striking illustrations of this hopeless contradiction of purpose.

Every one agrees that these laws were enacted to further free competition. Every one knows that no business man would undertake the strife of competition without the assurance that he may enjoy the price if he wins it. In order to preserve healthy competition, the legitimate growth and lawful extension of the business of the successful trader must be protected.

Now, the large business of the successful competitor, which the law logically must protect, presumes the disappointment of unsuccessful competitors. As Mr. Justice Holmes said in the Northern Securities case, "every concern monopolizes whatever business it does." Large business, for the time being at least, is the subjugation of competition, the victorious appropriation of the prize, and the exclusive enjoyment of it, subject only to the chance of losing it through the same rigor of competition by which it was won.

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Just here is where the mistake of so much futile legislation has arisen. Because a business becomes large—and every successful business grows large—and because the large business temporarily displays the characteristics of a kind of monopoly, we have hastily concluded that every business, as soon as it becomes large, is a monopoly, actual or incipient, and must be cudgelled and cuffed, and either repressed or regulated, in the same manner and with the same rigor as monopolies which have arisen unnaturally through unlawful methods of competition, or which have arisen inevitably because the nature of their particular business made competition impossible.

Repressive and prohibitory legislation has its place in the field of business competition. It should be directed, however, not against the form of a business organization, nor yet against the power which its efficiency may develop; but only against the use of unlawful means of competition. "Destroying or restricting free competition," "smothering competition," "extinguishing competition," "stifling competition," "eliminating competition," "preventing competition," "annihilating competition" and "suppression of competition" are practices subversive of healthy business rivalry. They are sometimes resorted to by the obscure and unsuccessful competitor, as well as by his conspicuous and successful rival. These practices should be specifically forbidden to large and small competitors alike. Whether the concern which resorts to these practices exerts great or little restraint upon commerce should be immaterial.

Regulation by governmental commission has its place in the industrial world. As a remedy for the abuses of business competition and of industrial trusts, however, it is destined to more disastrous failure than has overcome the prohibitory anti-trust laws.

In the control of public-service companies—such as railroads, street railways, water, gas, electric-light and water companies, public warehouses, stock-yards, and the like—which enjoy exclusive franchises granted by law or extraordinary powers conferred by the State, such as eminent domain, or which, by the very nature of their being, constitute a natural monopoly permitting of no competition, regulation by governmental commission has amply justified itself. In these anomalous businesses,



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which really are governmental functions entrusted to private capitalists to insure the most enterprising development, the Government very properly enforces the same principles that control the police and fire service. The duty to serve all, with adequate facilities, without discrimination, and at a reasonable price, is enjoined upon such businesses. Just as the administration of the police force and the fire department is naturally deputed to individual officials or commissioners responsible to the community, so the enforcement of the duty of public-service companies is properly vested in governmental commissions. Very naturally, the powers of both classes of commissions include the right absolutely to prescribe the character of the facilities and the price of the service, subject only to the limitation that, in so doing, the legal rights of the persons affected by their orders shall not be molested. Regulation by commission, however, is only necessary where the law or the nature of the business virtually prohibits competition. In fixing the price and conditions of service in these businesses, the law seeks merely to levy an equitable tax to defray a public expense. It presumes that competition—which in ordinary businesses adjusts the character of the facilities and the price of the service—is extinct, and, in fact, would be harmful, if revived. The effect, therefore, is to render real competition impossible in business which it regulates.

To extend regulation by governmental commission to businesses which do not enjoy exclusive franchises granted by law, or extraordinary powers granted by the State, or a monopoly arising from the nature of the business, and to apply regulation by commission wherever a business has developed large size, is to deny the efficacy of competition in its most normal working, and to hamper competition in every branch of industry. In such businesses, competition naturally exists, and, in order to maintain a healthy condition, should be encouraged. Interference with prices and with the form of organization of such businesses only creates artificial barriers, behind which lurk forms of privilege quite as dangerous as monopoly. Such interference stultifies the avowed purpose of all anti-trust legislation, and violates the first principle of economic progress, and subverts the fundamental proposition of individual liberty upon which this Government was founded.

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The abuses of business competition are real and serious, and must be cured by legislation. The remedy, however, lies in the direction of free competition, rather than paternal control. Every statute which furthers free competition, and strikes specifically at the various forms of unlawful competition and fraud which impede it, will hasten the cure. Any statute which imposes governmental interference upon a business merely because it is large—whether that interference be indiscriminate prohibition, or the more insidious form of regulation by governmental commission—will delay the cure, and prolong the uncomfortable situation in which business has stood before the law for the past twenty years. The principle which should guide all legislation upon this intricate subject was tersely expressed by the committee which drafted the Corporation Law of Massachusetts in 1903: "So far as purely business corporations are concerned, and excluding insurance, financial and public service corporations, the State cannot assume to act directly or indirectly as guarantor or sponsor for any organization under corporate form. . . . The State should permit the utmost freedom of self-regulation, if it provides quick and effective machinery for the punishment of fraud. . . ."

GILBERT HOLLAND MONTAGUE.

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# NEW BOOKS REVIEWED.

## HISTORY.

### INSTITUTIONAL HISTORY OF EARLY VIRGINIA.*

No one of the thirteen colonies has ever been subjected to an examination so wide, so searching and so intelligent as is that which Mr. Bruce has given to the colony of Virginia in the seventeenth century. Not a phase of the colony's life has been left unexplored, as far as the records exist from which information can be obtained. Already in two elaborate works on the economic and social aspects of the subject, one of which, at least, has become a classic in the field, Mr. Bruce has shown his tireless interest in the affairs of the old Dominion and his profound knowledge of the materials for its history; and now in a third and final work in two large volumes, typographically handsome, perfect from the proof-reader's point of view, well written, and well indexed, he has completed his survey and, as far as the seventeenth century is concerned, has brought to an end his long self-imposed task. His work will stand as a monument to his loyalty and allegiance to the land of his birth. Virginia has many times been honored of her sons.

The subjects here dealt with are of an importance second to none in the life of a people. Religion, morals, church organization and government, education, libraries, laws, courts, the military system, and lastly political conditions and taxation — these are the chief matters with which Mr. Bruce is concerned, and upon all of them he has shown a flood of light, filling his pages with facts and illustrations drawn from many sources that have not been used hitherto. He has not been content to search contemporaneous records existing in Virginia only; he

* "Institutional History of Virginia in the Seventeenth Century." An Inquiry into the Religious, Moral, Educational, Legal, Military and Political Condition of the People. Based on Original and Contemporaneous Records. By Philip Alexander Bruce, LL.D. 2 vols. G. P. Putnam's Sons.

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has gone to the sources in England, and has found among the papers which accumulated in the hands of the old Board of Trade and have since been calendared by the British Government, a mass of documentary evidence that he has woven with knowledge and skill into his descriptions. He has not examined all the original documents, though evidently, from his preface, he thinks that he has done so, but he has noted some of the most important and the most accessible. Of even greater significance than the British records for his purpose are those of the county courts of colonial Virginia, preserved partly in Richmond and partly at the county-seats, the evidence from which forms the chief source of supply for at least two-thirds of his work. The chapters based on this evidence are the most valuable that Mr. Bruce has written and present vividly and with great detail the chief features of the religious, educational, legal, and military life of Virginia.

The net results of Mr. Bruce's study are three. First, that Virginia was an aristocratic colony, founded upon agriculture, in which government, education, the professions, justice, military control, and the like were in the hands of a small number of men who were foremost of their times in ability, wealth, social rank, and power. Even small landholders were unable to gain political preferment, and though in a few instances indentured servants and agricultural apprentices rose to good and sufficient estate and so were able to command a position in the colony, yet pride in family and property, in a peculiarly grasping and sordid age, forbade that those in humble circumstances, no matter how worthy, should be leaders in the colony. The evidence that government in Virginia was for the people and never by the people is overwhelming, and although Mr. Bruce asserts that seventeenth-century Virginia was the home of popular government and so to be rated as high in this respect as New England, his own evidence everywhere belies his contention.

In the second place, Mr. Bruce makes abundantly clear what indeed was already fairly well known, that Virginia reproduced to a remarkable degree the conditions of English society of the same period. The great bulk of the inhabitants of all ranks were sprung from the English stock and were controlled by the ideas, traditions, and customs which characterized the majority of the English people at home. In gradations of social rank, in loyalty to the mother country, in social customs and diversions, in views

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as to religious faith, private property, forms of government, family life, personal demeanor, education and culture, the Virginian was more like the Englishman of his day than were the settlers of any other colony. The large plantations, the system of indentured and enslaved service, the social importance of the Anglican establishment, the limitation of education and learning to the few, and the recognition of English law and, as far as possible, English practice in the courts, tended to preserve even to the Revolution and afterward the essential features of the land from which they had come. Mr. Bruce has not pointed out all the lines of resemblance, but the most noteworthy of them.

In the third place, Mr. Bruce has sought to demonstrate the superiority of Virginia over other colonies as the land of liberty and free government. In this respect his work falls below the level of good history. His chapters on "Government under the Charters" and his closing words to the opening chapter on "Taxation" are not merely the pleadings of a favored son for his State, but also the utterances of an injudicious historian who is seeking to give a particular colony credit that is not peculiarly its due. In the larger field of historical philosophy and comparison Mr. Bruce has not shown the spirit of the just and impartial scholar. In the chapters noted above and elsewhere there is an undertone of insularity which seems to indicate that the author has dwelt so long in the Virginia of the seventeenth century that he has lost touch with the historical activities and spirit of the larger world in the twentieth. He quotes no recent authorities other than Virginian; his knowledge of English history is apparently limited to Macaulay, Green and Blackstone, of American history to Bancroft. He shows no familiarity with the researches of brother scholars and has not learned much that he might have learned and in so doing have made his work sounder and more accurate, not only in certain specific particulars, but also in its wider generalizations. He is a master within his own domain, but when he passes beyond and enters the field of historical interpretation and commentary, of political theory and government, he represents the narrowness and party bias which characterized American writers three-quarters of a century ago.

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The American people, thanks to the inspiration of Mr. James Ford Rhodes, are at last beginning to appreciate the dramatic

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interest of the period from 1850 to 1877 and to realize the importance of treating it from the purely historical point of view. The "Memoirs" of General Grant, McClellan's "Own Story," Pollard's "Lost Cause," Stephens's "War Between the States," Davis's "Rise and Fall of the Confederacy," and other works of similar character now occupy the posts of honor on our second-hand bookshelves, while the number of new books and articles is constantly increasing. The literature of the subject has in fact grown so voluminous that the general reader stands aghast. A good short history of the period is, therefore, very badly needed; a history which will present the leading facts without too much detail, and which will at the same time be accurate, interesting, and free from partisanship. The task of preparing such a book is extremely difficult and it is no derogation of Mr. Formby's work* to say that he has not been altogether successful. Although he complies with most of the requirements mentioned, there is nevertheless something lacking. In endeavoring to place before the eyes of the reader a picture of all the campaigns in progress at any particular moment he has adopted a method of arranging his material which is very distracting. The chapters are divided into sections, each dealing with the war in a particular district for a period of six months. The result is that the reader is constantly being interrupted in the midst of a campaign by the statement that the narrative will be continued some forty pages further on.

The work consists of seventeen chapters of reading-matter, a general index, a map index, and sixty-six maps and plans. There are four chapters leading up to the fall of Fort Sumter, twelve treating of the war and its results, and one devoted to reconstruction. Political conditions are treated very inadequately, the social and economic history is neglected, and the great financial operations which contributed so much to the success of the North are entirely ignored. The establishment of the national banking system is not mentioned at all, and Secretary Chase's name occurs only once. Foreign relations receive more attention, the treatment of the *Alabama* question and of the operations of Napoleon III in Mexico being especially thorough. It is, therefore, essentially a military history, and as such possesses consider-

* "The American Civil War: A Concise History of its Causes, Progress and Results." By John Formby. With sixty-six maps and plans. New York: Charles Scribner's Sons, 1910.

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able merit. With the exception of the atlas accompanying the official records, which is not easily accessible to the average reader, the collection of maps and plans is the best in existence. Instead of inserting them in the text, where they would spoil the shape of the book, or in a pocket at the end, where they would inevitably be lost, the author has very wisely issued these in a separate volume.

Believing that "attention has been unduly concentrated on the Eastern theatre of war, on account of the political importance of the capitals, and because the best commanders and armies were there" (p. 2), Mr. Formby lays special emphasis upon the war in the West. The battle of Stone's River or Murfreesborough, rather than Gettysburg, is considered as the turning-point of the conflict. An unusual amount of space is devoted to operations in the valley of the Mississippi, but nothing is said of General Butler's military administration at New Orleans. Indeed, it seems to be the author's policy to avoid controversial questions as much as possible. The shortcomings of McClellan, Pope, and Hooker are minimized, Longstreet is only mildly reproved for his conduct at Gettysburg, and Rosecrans's fiasco at Chickamauga is made to appear of little moment. Halleck's injudicious efforts to control field operations from Washington are, however, very severely criticised. The point of view is Northern, but the legal right of secession is frankly admitted and the attitude toward the South in general is unusually broad and liberal.

A few instances of carelessness and inaccuracy have been noted. Henry Clay was not the author of the Missouri Compromise of 1820 (p. 8) and the Compromise was not broken by the failure to extend the 36° 30′ line through the continent at the time of the admission of California (p. 24). Jefferson Davis was not opposed to the Fugitive Slave Bill in 1850 (p. 9), nor to secession in 1860 (p. 71). We do not believe that John Brown could properly be regarded as the leader of the Free State element in Kansas (p. 13), or that the Republicans were an abolitionist party in 1856 (p. 17). We should like very much to know his authority for the statement that "Georgia did not secede with a view of continuing her existence outside the Union, but in order to revise the conditions under which she accepted the Constitution, and come back on better terms" (p. 47). The bald assertion that Howell Cobb "found the Treasury full, and left

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it empty" (pp. 45, 46) is not altogether just. The panic of 1857 might at least have been mentioned. The Vice-President is of course not a member of the cabinet (pp. 21, 70), and Houston was not at the time of the war the capital of Texas (p. 269). Loose statements are occasionally found where the exact information could easily have been obtained. Jefferson Davis, for example, "died about 1893" (p. 442), and Longstreet "fought to the very end of the war, and lived for many years afterward" (p. 464). Notwithstanding these defects, however, there can be no question as to the real merits of the book. It presents an impartial and, on the whole, an accurate and interesting picture of the greatest civil conflict of modern times. No one who is interested in the history of that period can afford to neglect it.

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In 1870 Rudolf Haym's learned and exact, if somewhat dry, volume on the "*Romantische Schule*" was published in Germany and was followed almost immediately by Georg Brandes's acute and original "The Romantic School in Germany." The trend of modern thought has been steadily in the opposite direction from the speculative transcendentalists and the subject, except for Ricarda Huch's volume "*Blüthezeit der Romantik*" in 1899, has been much neglected.

But what a period of treasure it was! A period of real revival and enthusiasm; doctrines were turned topsyturvy; every settled question of civilization was reopened; the rights of the individual soul to its life and its desires were all reasserted, and the poor contented Philistine of the day received his severest slappings. But he won in the end, the Philistine, as he always has done, as he always will do, because he understands the nature of the world he lives in. The children of this world are wise in their own generation and understand how to make friends of the mammon of unrighteousness. The Romantiker, with their enthusiasms and their questionings, and their soul turbulences and their loves, came mostly to grief as these poor enthusiasts generally do. Friedrich Schlegel and his Dorothea found peace and safety after all the tumult in the bosom of the Roman Catholic Church. August Wilhelm Schlegel handed over his obstreperous Caroline "in all dignity and friendliness" to Schelling, and himself became a staid, hard working German professor whose ardu-

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ous and wonderful translations into German of Shakespeare, the Bhagavadgita and the Ramayana sapped a good deal of his youthful, naïve sentimentality. Hard regular work will nearly always initiate a man into reality and give him a steadying sense of what life actually is. Novalis, having written the "Hymns to the Night" and justified in his "Heinrich von Ofterdingen" his impassioned love for the dead Sophia and the living Julia, died prematurely of tuberculosis. One by one they died or grew old and cold and hard-working and so the romantic fire went out. But the works remain and are more full of meat for thought and food for psychology than perhaps any other single literary period—if one except the young romanticists of England and the Neo-platonists. For there was no horizon too far away for the thoughts of those young romantics to reach; no outlook that they could not drench in the glamour of their romantic emotions. They fairly wallowed in the sense of the Infinite.

With Wackenroder as art interpreter and lyric-singer, with the two Schlegels and their attendants, Dorothea and Caroline, as literary critics, men-of-letters and theorizers, with Novalis as the teller of fairy-tales and singer of night hymns, and Tieck with his dreams and his nonsense and his legendary lore, and Schelling making philosophy and Schleiermacher religion romantic, what a period it was! They were all so full of inspiration, so unguided by historic sense, so unashamed to sing themselves and their own emotions and speculations. They made not the slightest effort to relate themselves to the rest of society, to the past of civilization, to the general trend of human thought and life. They despised all life that was not freely romantic and self-lighted; they revelled in their own emotions. They were undoubtedly lacking in mental chastity and gentlemanly restraint —else how could a man set down boldly such vaporings as:

"Methinks music is like the bird Phœnix, rising from his nest with lightness and joy, born anew, soaring heavenward midst rejoicings, a gladsome sight to God and man. But sometimes I imagine music a babe lying dead in its grave—a crimson ray of light from heaven gently lifting up its soul to celestial regions, where it partakes of the golden drops of eternity and of divine visions seen by man only in his most lovely dreams—and sometimes—how beautiful and endless are those visions!"

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But whether endless or not they are far too long for citation.

Professor Wernaer,* who in sixteen chapters has given us an excellent, though necessarily incomplete picture of the young German Romanticists, has acquitted himself most ably of the task. The book is delightfully interesting and would set those not brought up on German sentimentality to delving at once into this veritable mine of treasure. It must be said that the author is not wholly successful in making clear to the English mind what the Romanticists meant with their free and perplexing use of the word *Ironie,* which he says conveys to him "a joy in possession of the powers of an infinite spirit." Again of Schlegel he says: "He thought it was the duty of the poet not to forget himself entirely in the midst of his love. His doctrine of *ironie* is to explain this to us." If one desired to be flippant over a matter that really deserves profound attention and respect one might suggest that the Romanticists, having invented a universe drowned in a sea of emotion, suddenly discovered that to be complete the world should have wit as well, and so they discovered *ironie* as a sort of little island where they might take refuge from time to time to laugh at themselves and the world they had made. Again one feels that the word "mood" does not quite stand for the same thing as *stimmung,* but here one flounders in the impossible depths of conveying into an alien language a whole frame of mind belonging specifically to another tongue and another age. In general, Professor Wernaer's study into the nature and use of the romantic diction is very able.

The proofs of the book have been inadequately corrected, and in one place (page 217) the same line is printed twice; several German titles are incorrectly printed, as "*Der Gestieferte Kater,*" etc., and here and there we have a German construction that fails to make sense. The author's theoretic generalizations are more interesting and valuable than the biographical data; and the chapters which were not delivered as lectures at Harvard are the more interesting ones in the book.

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Often the overflow of a great man's learning makes the most delightful reading. Professor Gildersleeve's fascinating and witty

* "Romanticism and the German Romantic School." By Robert M. Wernaer. New York and London: D. Appleton & Co., 1910.

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volume on "Hellas and Hesperia" is a case in point, and the present volume* by Professor Mahaffy is another. Not so learned, so full, so exhaustive, as the author's "History of Greek Literature" or his "Social Life in Greece," the book is invaluable as giving to the amateur a bird's-eye view of Greek arts and sciences. If Professor Gildersleeve, in his delightful address quoted above, claims the Greek endowment for Americans, Professor Mahaffy takes as his thesis that all the modern world has of endowment and acquisition it owes to Greece. He is unwilling to allow us to arrogate to ourselves any superiority. If the Greeks did not invent the steam-engine, they carried out in mechanical engineering works that no modern builder has equalled. And in every domain of thought the Greek form, he asserts, has been the greatest and clearest and most beautiful.

The book which contains the Lowell Lectures of 1908 and 1909 is an attempt to cover the ground of Greek influence in the fields of poetry, prose, architecture, sculpture, painting, music, grammar, logic, mathematics, medicine, politics, sociology, law, philosophy, speculation and practical theology. The result is necessarily a cursory glimpse at each department. Dr. Mahaffy has very little sympathy with mediævalism and all that it implies — Gothic architecture, democratic feeling, the introduction of the grotesque and suggestive in art, the complex personality, gloom, fear, repentance and the sense of sin. His whole book is a plea for humanism and a revival of the classics and a new aristocracy of the intellect. What we now call "untutored genius" our author despises, and asserts that no such matter ever survived in Greek poetry. Artificial things, he says, are usually a real and great improvement upon Nature and this was the Greek tradition. From Homer to Theocritus, Greek poetry was elaborate, learned, carefully studied. This, at any rate, is a valuable lesson for the present generation to lay to heart.

The last chapter on philosophy and theology contains some excellent and pertinent criticism of America and its present-day slapdash methods. The book itself, however, is not without reproach of somewhat the same sort of method. A too-cursory glance at too wide a field; a treatment almost too popular for so grave a

* "What have the Greeks done for Modern Civilization?" By John Pentland Mahaffy. New York: G. P. Putnam's Sons, 1909.

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subject. It is none the less a book to be grateful for as the overflow, not too technical to attract the average reader, of a very learned scholar.

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Secretary Seward's prophecy that the "Pacific Ocean, its shores, its islands and the vast region beyond will become the chief theatre of events in the world's great hereafter," and President Taft's statement that "the problem of the Pacific is the greatest problem now before the American people," sound the key-note to the discussions on China and the Far East held at Clark University last summer and now appearing in book form. Twenty-two papers of unequal value, and of necessity including considerable repetition of subject-matter, make up this volume. The diversity in point of view and the variety of opinions expressed give the reader an insight into the complexity of the Eastern problem that would be impossible in the work of a single author. The majority of the papers deal with some phase of the political, economic or commercial conditions of China, Japan and Korea, and their relation to the United States and to each other. Dr. Wright's chapter on the "Opium Problem" and Professor Harlan Beach's "History of Christian Missions in China" have an important bearing on the main questions and are not the least interesting in the book. If a main theme may be found running through such varied discussions, it would be the discussion of political, economic and commercial policies framed by the nations of the world in general, and the United States in particular, as a result of the three inequalities suffered by China in the family of the nations. These inequalities are: first, the fact that China is not at liberty to fix her own tariffs; second, the establishment of extra-territorial courts on Chinese soil; and, third, the exclusion by America of Chinese emigrants. In view of these inequalities, the policy of the "Open Door," the "Territorial Integrity of China," present diplomatic and political difficulties which justify President Taft in designating them as the weightiest American problems. Dr. Kan-Ichi Asakawa's paper on "Japan's Relation to China" is one of the most interesting contributions to the discussion and gives the Japanese point of view with great clearness and acumen. "The Awakening of Korea," by Mr. Horace N. Allen, formerly Minister to

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Korea, has a timely interest owing to the recent developments in that peninsula. Although collections of papers are, at best, unsatisfactory reading, "China and the Far East"* is an exception which proves this rule; its very discursiveness gives an added insight into the complexity of the Eastern problem.

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## FICTION.

WHEN in the preface to "Major Barbara" George Bernard Shaw spoke of "extraordinarily fresh, free and future piercing suggestions" which he derived from the works of one Samuel Butler, unknown to the many, it was merely a matter of time until there should be reprints of this author. Messrs. E. P. Dutton have now brought out an American edition and the book will doubtless be much read. Samuel Butler is not so much the forerunner of Bernard Shaw as he is the master of H. G. Wells. In "The Way of All Flesh"† there is a savage attack upon the old time-honored institution of the family and upon the hypocrisies of religion and respectability as these obtained in the middle of the last century. If the profession of the novelist is to register facts, to see and set down life as it is, then "The Way of All Flesh" is a remarkable novel, for it gives a vivid and full sense of life as it was lived about 1860. Doubtless it is somewhat mercilessly set down. There are two ways of viewing the meanness of human nature—one way is to see man as he is and yet love the contemptible creature for what good is in him as Meredith does in "The Egoist." The other is to deal in wholesale contempt, and this way is Butler's. The difference, after all, lies in the capacity of the beholder. The best of us are more or less ridiculous; the worst have our moments of heroism. The attitude of "great God to a black beetle" is a difficult one for a mere mortal to maintain long with dignity. The book, however, is as refreshing as was "Tono-Bungay" in its wealth of detail, fulness of life, verve and vitality. One turns from it with the sense of experience as one might from a three months' stay in a strange city. Its people, its customs,

* "China and the Far East." Edited by George H. Blakeslee. New York: Thomas Y. Crowell & Co., 1910.

† "The Way of All Flesh." By Samuel Butler. New York: E. P. Dutton & Co., 1910.

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its faults and virtues, will hardly die utterly from our minds. One cannot but speculate how much the author owed to George Meredith's "Richard Feverel," for certainly the mistaken shelter and isolation of the hero's upbringing resulted in much the same way.

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Miss Willcocks's "Wingless Victory" already gave her a place among the more serious and fully equipped novelists. "The Way Up,"* despite its unattractive title, helps to establish her standing. Her theme is that of capitalism *versus* organized labor, and her hero, Michael Strode, is one of those new adventurers into the field of social betterment. "Michael possessed the social sense, and every now and again, quick-winged like the lightning, there would come to him the perception of the unity of life." If he is well presented, by far the finest drawing in the book is that of the Rabelais in petticoats, his mother, a splendid type ably done. There is ample philosophy and perhaps overmuch epigram in the book. The epigrams are, however, good.

"If Bluebeard had given his wives a first-class funeral, instead of chopping their bodies up small, he might have died a highly respectable town councillor."

"If you don't give a man pleasure of one sort he'll only seek another. Believe me, it's only bestial pleasures against refined ones or, rather, stupid ones against brainy."

"She always reminds me of one of Balzac's good women—no good at all for want of a little vice, like an English cook's *bouillabaisse,* fish soup without the garlic."

The last remark is the mother's comment on the good woman, the helpmeet of the story. The author has only hinted at her doctrine that the woman who sacrifices her race instinct to personal development and self-fulfilment misses the best of life. To be sure, she lets Elise go down the stream, but she leaves us insecure as to Philippa's ultimate happiness. It may be the last sacrifice of the good woman who is true to her race instinct that she cannot even be interesting in a novel.

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We have had three great New England story-writers. Mary Wilkins Freeman has untutored genius, but never acquired

* "The Way Up." By M. P. Willcocks. New York: John Lane Company, 1910.

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craftsmanship; Sarah Orne Jewett had exquisite craftsmanship and lacked the force of genius; Alice Brown has genius and the craftsman's skill combined. She creates atmosphere; a rich, fragrant, flowering atmosphere of homely virtues, faith and loyalty. Very tenderly she touches belated or miscarried love-affairs, and especially has she a happy way of describing "the loves that doubted, the loves that dissembled." If this volume of "Country Neighbors,"* following closely on "Country Roads," gives us perhaps a superfluity of the same thing, it is not, after all, Miss Brown's fault that New England types are monotonous.

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For lovers of romance and mystery here it is in plenty.† A villain and a hero, and a lovely Irish girl and a rich American, and an old Crœsus and a guest, all the *mise-en-scène* of drama, and redeemed by snatches of quite exquisite vision and transcription. "The dusk was thickening almost perceptibly and it was yet far from dark. The swift river ran leaden beneath them, and the river boats, mouches and hirondelles darted silently under the arches of the bridge, making their last trips for the day. Away to the west, where their faces were turned, the sky was still faintly washed with color, lemon and dusky orange and pale thin green. A single long strip of cirrus cloud was touched with pink, a lifeless old-rose, such as is popular among decorators for the silk hangings of a woman's boudoir. And black against this pallid wash of colors the tower Eiffel stood high and slender and rather ghostly." Such touches of clear vision would catch the erring attention of the weariest reader of romance, and to those who prefer fiction to fact, a man-imagined world to God's realities, the book offers refreshment and help. For ourselves, we should wish Mr. Forman to drop melodramatic plot and write more about the scenery of Paris.

* "Country Neighbors." By Alice Brown. Boston: Houghton, Mifflin Company.

† "Jason." By Justus Miles Forman. New York: Harper & Brothers, 1909.

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